**NEWMARKET PLANNING BOARD MEETING**

**DECEMBER 11, 2018**

**MINUTES**

Present: Eric Botterman (Chairman), Val Shelton (Vice Chairman), Diane Hardy (Town Planner), Jamie Bruton, Daniel Lewis (Alternate), Michal Zahorik (Alternate), Bill Doucet (Alternate), Gretchen Kast (Town Council ex officio)

Absent: Sarah Finch, Janice Rosa – excused, Jane Ford

Called to order: 7:06 p.m.

Adjourned: 8:15 p.m.

**Agenda Item #1 - Pledge of Allegiance**

**Agenda Item #2 - Public Comments**

None.

**Agenda Item #3 - Review & Approval of Minutes: 11/13/18**

Eric Botterman appointed Daniel Lewis and Michal Zahorik to fill in for Janice Rosa and Sarah Finch.

**Action**

**Motion: Gretchen Kast made a motion to approve the minutes of 11/13/18**

**Second: Daniel Lewis**

**Vote: All in favor**

**Agenda Item #4 - Regular Business**

**Eric Dewitt – Continuation of a public hearing for an application for site plan review, at 81 Exeter Road, Tax Map U3, Lot 137, B1 Zone. The proposal is to remove the existing buildings and driveways and build a 2,920 sq. ft., two-story, mixed use building, with associated parking, lighting, and drainage.**

Diane Hardy referenced a memo to the Board. The first paragraph was an overview. Application acceptance and the first public hearing was on June 12, 2018. Since then, there have been five iterations. They have letters from the applicant’s engineers and the Town’s stormwater management emerged as a major design issue due to wetlands, the high water table and the newness of the technique for porous pavement. Greater details were required for review, so additional plans came in that were much more detailed and specific. She has received a memo from Underwood Engineers, with review number six, which states they are satisfied with the status of the plans, as such, but there was one comment they felt was not adequately addressed. This has to do with the concrete dumpster pad and the location. The engineer was hoping they would raise the elevation of the pad, so it would not interfere with the runoff. They are looking for some spot elevations.

She stated there was an alternative design presented for a more traditional stormwater system, where there is paving and curbing and runoff to a detention basin. If there was a failure in an existing system, that alternative system could go into effect. The engineer is satisfied with the design, but there were some recommendations. They would like to get information on how the Cell-Tek system will be maintained. Mr. DeWitt had gotten back to her with some information, but there is information they are still waiting for. They are asking that the information be provided to the Town’s engineer for review, as a condition of approval. Due to the newness of the technology, the engineer recommended, and she agrees, there be some kind of bond posted to provide a performance guarantee that the Cell-Tek system will perform as it is designed and, if it fails, there is money available to implement the alternative parking design plan. Mr. DeWitt’s engineer provided a cost estimate. They established a $41,000 amount to replace that system, with the new system. The recommendation would be for a bond to cover the cost and the full amount of the renovations. They have cost estimates for those.

She stated they also talked about a maintenance bond. These new stormwater systems work great provided they are properly maintained. This was discussed with legal counsel and the recommendation is for a bond for up to 50% of the value of the maintenance work over the course of a two year period be provided, in the event it is not maintained accordingly or not functioning the way it was intended.

She stated this is all detailed in her memo. They have satisfied the requirements, with the exceptions mentioned.

Eric DeWitt asked about a recommendation in the memo. He said there was no value assigned to it (sound on DVD was not good quality here, much of his question was inaudible).

Diane Hardy stated the way that works is they require escrow be set aside for construction engineers throughout the course of the project. The Town asks for an estimate from the Town Engineer and they give an estimate on how much it would cost for site inspections over the course of the project. That money is provided to the Town to be used on an as needed basis for inspections. The smoother the construction, the shorter the time, the lower the cost. It is hard to say how much this will be. There are projects like the Industrial park, where you have 24,000 sq. ft. buildings to maintenance of roadways and the golf course. They recently did a small subdivision and the review was about $5,000. Eric Botterman stated that was significantly more work than the applicant’s project. The engineers only come out when necessary. They are not there eight hours a day.

Eric DeWitt stated, on “C”, there was no value assigned. Diane Hardy stated that is all written in detail in the developer’s agreement. Eric DeWitt stated there was no value for impact fees. Diane Hardy stated part of the project is commercial office use. They don’t know who the tenants will be. The cost for water and sewer impact fees is based on the average daily flows anticipated by the use. It could change depending on the tenant. She can give him gallon per day info. Residential is more straightforward based on the number of bedrooms. The rates haven’t changed since 2001. There are provisions for waivers for certain impact fees. For example, if you were making offsite improvements.

Eric DeWitt stated he would like to talk about “H”, the request to hold the money. It looks like $55,000. Diane Hardy stated they need to figure out the maintenance cost and need some data. That is why they need the stormwater operation maintenance plan, so they know what is involved in that.

Val Shelton stated you have 24 months for bonding and asked how many months for the maintenance. Diane Hardy stated she has seen it a number of ways, but she would say two years, to make sure it is working. Maybe it wouldn’t be a full failure, maybe it just needs an additional sweeping. Eric DeWitt stated this is not porous pavement. He knows there have been issues with systems where there are gaps between pavers and the gaps fill up with sand. This is a system where the entire thing is permeable. It is crushed rock held together with a grid that distributes the weight laterally. He does not see it as being much of a problem. They are still talking about $50,000 being locked up for two years. Based on his preliminary numbers, that may push the system to be foregone and go to more traditional routes. He thought the system is a good way for Newmarket to be a leader with something new that works. At the TRC meeting, they had talked about 10% of this number being locked up. Diane Hardy stated there are different forms of performance guarantees. One is a letter of credit, which is where you have funds in a bank set aside and the Town could draw upon it if there was a failure. There is also a performance bond, which is not the preferred alternative for municipalities. There is a lot involved. The cost of a maintenance bond is much less than this. Our Facilities Manager, who does a lot of construction bonding, said if it was 50%, it would be 50% of the $20,000. He said the cost of a performance bond, if you have good credit, would be $850 at 50%. It is not as expensive as tying up your funds. Eric DeWitt stated he was hearing that $40,000 translates to $800. Diane Hardy stated that is what she was told today. The safe route is for him to contact his insurance company and see what the cost would be.

Eric Botterman stated regarding the first sentence in “H” about posting a 100% performance guarantee for the stormwater management system, the performance guarantee is usually for construction and the maintenance guarantee is for maintenance. Diane Hardy stated municipalities use maintenance bonds typically for a construction contract, where a project may need stabilization and erosion control, for example at a gravel pit. You don’t know how long that will take and you want to have some money in place. She was always led to believe it was less than the full amount of construction. It varies. The amount could be anything this Board feels is warranted. Eric Botterman stated, based on this, it appears we are getting a maintenance bond twice. Val Shelton stated, if the trigger on the time is from an occupancy permit, it is in the two year period. If it fails within the two year period, the Town can exercise its right to have the Cell-Tek replaced with the traditional pavement and detention pond. It is up to the applicant to make sure the Cell-Tek is maintained over the two years, so the Town isn’t stepping in and having him expend $40,000 on a new system. She felt it was a double burden on the applicant for maintenance and replacement. He has to maintain it otherwise he has to replace it. Diane Hardy stated they also have the authority under enforcement requirements, if the stormwater system in place fails, it becomes an enforcement matter. The bond is protection to him as it gives him insurance that won’t happen. Eric Botterman stated a performance bond insures the construction gets done properly. Diane Hardy said you can call it what you want, but it is a bond that ensures the system performs. Eric Botterman stated, if the system fails, their avenue would be through the Code Enforcement office. Val Shelton stated, if it does not work, it will be replaced with the alternative system, because that is a condition of the site plan review. Diane Hardy stated that could be one venue. She agrees it is kind of overkill. What is important is there is some means to make it right. Val Shelton stated that is why they are requiring the alternative design. Diane Hardy stated the attorney explained it was not like a road bond, where after two years, if it’s going to fail you can readily see. He suggested it should be more like three to five years. Eric Botterman stated he liked the idea of a new technology, because something has to be done with stormwater. They install it per directions and for some reason it doesn’t work. The Town is not going onto that property and fixing it. The bond does not allow that, it gives permission to shut him down. Diane Hardy stated the bond gives him the money to correct it. It is protecting him, as well as the Town. Eric Botterman stated you look at the chances of it failing.

Eric DeWitt stated they looked at a third system. They looked at under pavement storage basins, which are big plastic tanks. All around those is the same stone they are proposing to use. That system relies on the water hitting the pavement, going over to go down a drain, through a tube into a big chamber and infiltrating through the same rock that is specified for this design. This design eliminates all of those tubes, all that travel of the water and the water just hits and sinks in. He asked if performance bonds are required for those underground chambers. Diane Hardy stated possibly. Eric Botterman stated he wanted to make sure they have enough money to protect the Town and, if the applicant does not have enough money to fix it, they get shut down. Diane Hardy stated a risk analysis and that is what insurance companies do.

Bill Doucet stated requiring an applicant to bond for reconstruction of the site is not required if you require them to bond for maintenance. If you are properly maintaining it, you won’t have to rebuild it. It if was not designed properly, there are alternatives to mitigating that. Eric Botterman they have never told anyone they have to bond in case their system fails. We bond for construction and then they own it.

Bill Doucet stated he thought bonding to build an alternate system is overkill. Bonding to maintain the design system is appropriate. The Board can determine what the amount of that bond should be for maintenance. Diane Hardy stated Dover had 30% for maintenance bonds. She has been in touch with the Assistant City Engineer in Exeter and they talked about what they do. The Exeter Planner has recommended maintenance bonds in the past.

Eric Botterman stated just a maintenance bond is fine. He agrees with Bill.

Diane Hardy stated the facilities manager can perhaps come up with figures. Eric DeWitt stated he could work with him on it. Eric Botterman stated he is fine with it being a maintenance bond, the amount to be agreed upon between the applicant and the Town.

Michal Zahorik stated failing could mean water pollution, with the nearby wetlands. He asked who would measure that. Diane Hardy stated as part of the plan, they expect the applicant inspect their system and provide reports. DES has jurisdiction over wetlands. Eric DeWitt stated he thinks they went as far as 100 year flood.

Eric DeWitt asked if a maintenance plan has to be submitted for this project. Diane Hardy stated they are under an administrative order from EPA with respect to the wastewater treatment plant and they have to do due diligence with respect to stormwater. All developments that come before the Town have to have their information reported to the EPA. The next part of that is, if you increase impervious surface and you add a BMP, what that translates to in terms of enhancement of water quality. They have to provide that information on all projects.

Val Shelton stated, she had an amendment, “Under “H” performance and maintenance guarantees, the applicant shall post a performance guarantee for the stormwater management system to assure timely and proper construction and proper maintenance of the system in the amount to be agreed upon between the applicant and Town Administrator for a period of twenty four months after completion of the stormwater management system. This performance guarantee shall be posted prior to the execution recording of the plan. These guarantees shall the form of a self-executing letter of credit (inaudible) acceptable to the Town’s legal counsel.”

Jamie Bruton felt that twenty four months was not long enough. The weather changes so often, it may not be long enough for a good gauge of the system. Val Shelton stated that was a good point. Diane Hardy stated legal counsel had mentioned three to five years. This is something to research. The longer timeframe makes sense. Jamie Bruton stated, in her experience with bonds, it was a five year period. That can change.

Diane Hardy stated legal counsel offered to come to the Board and talk generally about performance guarantees and other options.

Eric Botterman stated, if there is difficulty in getting a bond, they could put money in escrow.

Eric Botterman asked for the Board’s opinion on the bond. Bill Doucet stated there was logic to having an extended period. You may not see what it can handle in two years. Val Shelton and Daniel Lewis agreed. Eric Botterman suggested saying five years or until there are two 25-year storm events. There could be two major storms right after it is installed.

Michal Zahorik asked if this was unique or were there other companies with this system. Eric DeWitt stated there are three companies. He did not know how long they have been in business. Val Shelton stated there were too many unknowns. Eric DeWitt stated it is used in a lot of ways, such as base material for porous pavers and some people put grass over it. It relies on the voids in the rock to hold the water. He was not going to use sand on it. This already has a grit, so you don’t need to sand it in winter. The Facilities Director’s only concern was at the entrance. Part of the maintenance would be to scoop, sift and replace it there. He is looking to get a tractor to be able to do it onsite.

Eric Botterman asked about the two 25-year storms. Val Shelton suggested adding the applicant can come before the Board prior to the expiration of the 60-month period to request the bond be released, if sufficient evidence is provided to justify same. Diane Hardy stated it is typically done at an administrative level. Val Shelton stated that was fine.

Eric DeWitt asked where these storms are measured. Diane Hardy stated there is a gauging station in Durham. Michal Zahorik stated there is one at UNH, as well.

***Eric Botterman closed the public hearing.***

Eric Botterman stated they needed to address the Special Use Permit and waivers.

Diane Hardy stated this went to the Conservation Commission twice. They voted to put out a letter of support. They have a letter from the Chairman saying they are not opposed and it meets the criteria for the Special Use Permit. She recommends granting the permit for the wetlands buffer relating to very poorly and poorly drained soils.

**Action**

**Motion: Val Shelton made a motion to grant the Special Use Permit to allow encroachment on the 50’ buffer requirements for Very Poorly Drained Soils and 25’ buffer requirements for Poorly Drained Soils under Section 32-155, as all of the conditions have been met for the granting of a Special Use Permit for the application at 81 Exeter Road, Tax Map U3, Lot 137, B1 Zone**

**Second: Jamie Bruton**

**Vote: All in favor**

Bill Doucet asked, regarding the first waiver request, when they count the required parking spaces, did they include handicap spaces. Diane Hardy answered yes. Bill Doucet stated, if those spaces are not being used, they do not have that number of spaces available. Diane Hardy stated yes. Bill Doucet stated, regarding shared parking, they have restaurant use and residential use. He asked how the shared parking worked. Diane Hardy stated it was because of the hours of operation. Bill Doucet asked what the hours of operation were for a restaurant. Eric DeWitt stated it is based on hours. People in residential are expected to be at work during the day. The other business is a day business, so those spaces get shared. The proposal is for a mixed use, with flexible space on the first floor. Bill Doucet asked, if it was a restaurant open in the evening, how the shared space worked. Eric DeWitt stated the day is broken up in three time slots and you get a different percentage for each slot. There will be assigned parking for tenants.

**Action**

**Motion: Jamie Bruton made a motion to approve the first waiver request (Section 3.02(A)(9a) Number of Spaces)**

**Second: Val Shelton**

**Vote: All in favor**

**Action**

**Motion: Val Shelton made a motion to approve the waiver request from Section 3.02(B)(4) to allow the use of wooden curb stops**

**Second: Jamie Bruton**

**Vote: All in favor**

**Action**

**Motion: Val Shelton made a motion to approve the waiver (of Section 3.02(C) to allow parking within the 25 foot side setback)**

**Second: Jamie Bruton**

**Vote: All in favor**

Eric Botterman stated he would entertain a motion for approval, as outlined in Diane Hardy’s memo and as amended in previous discussion.

**Action**

**Motion: Jamie Bruton made a motion to approve the application**

**Second: Val Shelton**

Bill Doucet asked when DOT received the driveway application. Eric DeWitt stated around June or July. They asked for more information and that was provided. Last he heard, they liked what they saw and they were okay with it. DOT was going to speak with the Town Planner. He has to keep pushing for it. He asked if the Town could speak to DOT about the long wait for businesses trying to get permits.

**Vote: All in favor**

**John & Lori Wiswell – Request for Waiver of Impact Fees for an Accessory Dwelling Unit at 20 Great Hill Drive, Tax Ma U5, Lot 24, R2 Zone.**

This item will be continued to the next meeting.

**Agenda Item #5 - New/Old Business**

**Discussion – Master Plan**

Diane Hardy stated she would like to talk about this at the next meeting.

Val Shelton stated she had suggested a matrix of everything and when it was last updated and denote which are required under State law and optional ones.

**Planners Report**

Diane Hardy stated the Stormwater Committee will meet on Thursday. She asked who was attending. They should have a quorum. There are about twelve communities that have adopted this.

**Other Business**

Bill Doucet asked how a 53 seat restaurant requires only 18 parking spaces. Val Shelton stated people walk. The M2A Zone is really an extension of the downtown. Bill Doucet stated they may have to cross the wetland to put additional parking out back. The funeral home did that with a permit.

**Town Council**

Gretchen Kast stated she had brought the Master Plan up at Town Council and they mentioned a chapter on energy. Councilor Weinstein may contact Diane Hardy regarding this.

**Agenda Item #6 - Adjourn**

**Action**

**Motion: Val Shelton made a motion to adjourn at 8:15 p.m.**

**Second: Eric Botterman**

**Vote: All in favor**