

## Planning Board Minutes 11/13/12

### NEWMARKET PLANNING BOARD MEETING NOVEMBER 13, 2012 MINUTES

Present: Val Shelton (Chairman), Janice Rosa (Vice Chairman), Diane Hardy (Town Planner), Eric Botterman (Alternate), Elizabeth Dudley, Ed Carmichael (Town Council ex officio), Rick McMenimen

Absent: Justin Normand (excused), Adam Schroadter (excused), Jane Ford (Alternate)

Called to order: 7:01 p.m.

Adjourned: 9:44 p.m.

#### Agenda Item #1 – Pledge of Allegiance

After the Pledge of Allegiance, Chairman Shelton appointed Eric Botterman to fill in for Justin Normand.

#### Agenda Item #2 – Public Comments

None.

#### Agenda Item #3 – Review & approval of minutes: 09/18/12

09/18/12

Janice Rosa stated Justin Normand and Adam Schroadter were not present at the site walk. They were listed in the minutes as having been present.

#### Action

Motion: Rick McMenimen made a motion to approve the site walk on Tuesday, September 18, 2012 with adjustments and corrections

Second: Eric Botterman

Vote: Eric Botterman & Elizabeth Dudley abstained, as they were not present at the site walk

All others in favor

10/09/12

## Action

Motion: Rick McMenimen made a motion to approve the minutes of October 9, 2012 with corrections if any

Second: Eric Botterman

Vote: All in favor

10/20/12

## Action

Motion: Rick McMenimen made a motion to approve the minutes of the site walk on Saturday, October 20, 2012 with corrections if necessary

Second: Eric Botterman

Vote: Elizabeth Dudley & Rick McMenimen abstained, as they were not present at the site walk

All others in favor

## Agenda Item #4 – Regular Business

Wayne & Janice Rosa – Continuation of a public hearing for an application for renewal of an excavation permit, for Wayne & Janice Rosa, for the property located at 421 Wadleigh Falls Road, Tax Map R6, Lot 2, B3 Zone.

Janice Rosa recused herself.

Chairman Shelton stated they had received a report from the Conservation Commission and they had received the test pit results.

Diane Hardy stated they had received test pits from MJS Engineering. They did two test pits, one was performed in the lower area near the active gravel bank and the second was near the loam stock pile. In both cases the soil profile was a medium coarse to fine sand with some medium silty sand. The seasonal high water table was greater than five feet from the surface in both cases. The water at the surface is not groundwater. She read the entire document.

She spoke about the Conservation Commission's report. She stated Drew Kiefaber had written about concerns because the public water supply draws water from that aquifer. It is the interest of the Conservation Commission that ongoing operation of the sand pit does not jeopardize the quality of the public water supply. They recommended that the applicable excavation regulations be followed. They did note there have been areas that have been reclaimed and there has been very little erosion seen in the pit. They noted the standing water and indicated this was not a concern due to the test pit data and groundwater levels. They noted there were residual structures and discarded metal drums on the site from when the site was a racetrack and there was some PVC pipe found in the locations. They point out, according to an EPA report, while most PVC is stable and not prone to leaching. Some pipes manufactured before 1977 contain elevated levels of vinyl chloride and may be susceptible to leaching. While not required as part of their review, it would be desirable to remove them. The Conservation Commission stated they had no objection to the renewal of the Rosa gravel pit excavation permit.

She stated she and the Code Enforcement Officer did a site inspection of the pit on October 11. They prepared a checklist based on the Town's excavation requirements and the minimum expressed standards that are contained within RSA 155E. There were a couple of areas of concern, which they discussed with Mr. Rosa. One was there were some areas where the grade was greater than 1 to 1 slope. They are required to put a barrier to limit the potential danger associated with that. She stated they talked to Mr. Rosa about putting some boulders out to mark that area. When they went out on the site visit, they found those barriers had been installed. They had also requested some additional signage be put up in the pit. Wayne Rosa stated he had done that. Diane Hardy stated they looked at the entrance to the pit. When they did the last inspection three years ago, there was some ponding and puddles in that area, with potential for erosion. Since then, Mr. Rosa has been applying crushed stone to that area and has built up a very stable surface. They did not see any erosion on this site visit. She recommends a condition of approval to be that the applicant continues to do due diligence with maintenance of the entrance and additional stone should be placed in the spring to stabilize the entrance and re-grade and shape the swales, as needed, to maintain proper drainage in that vicinity. She recommended the Planning Board extend the excavation permit for another three year period. She stated all of the reports are current, filed with the Town and the NH Division of Revenue Administration. She did not see any reason for the Board not to take action and approve this. She would recommend the conditions placed on the previous approval continue. Diane Hardy reviewed the conditions of the previous approval. They have a performance bond of \$27,000 which is up to date.

Chairman Shelton opened the public hearing.

Rose-Anne Kwaks, Wadleigh Falls Road, stated she understood the Rosa pit does not have to follow the current aquifer protection ordinance that was put in place in 2002, because it was a legally existing pit at the time the ordinance came in. She then asked if that was the reason they do not have to adhere to the stricter rules. Diane Hardy stated the Town's current aquifer ordinance prohibits excavation pits. The Rosa pit was in existence at the time that was passed and, therefore, they are grandfathered and can continue. She stated they are current with the other local and state excavation and operational regulations. Mrs. Kwaks said it does state in the ordinance the pit would have to have legally existed when the new ordinance was passed in order for them to be grandfathered. It is her opinion that the Rosa pit was not a legal pit at the time the new ordinance was passed, so they are not grandfathered. They had three letters sent to them starting in February 1995, with letters following from Clay Mitchell explaining that they let their permit expire for a period of five years. Therefore, they were not a legally existing gravel pit at that time. She gave handouts to the Board containing the letters and communications. She stated, when the Rosas applied for the new permit in 2002, they did not legally exist. Also, she said it states in the letter between Diane Hardy and Laura Spector, that "uses which legally exist prior to the adoption of a Zoning Ordinance are not required to come into compliance with the Zoning Ordinance." They did not legally exist, because at that time they were in violation of RSA 155 E. They did not have a permit for five years. She stated she was not saying not to let them excavate. She stated he has been excavating and she went on the site walk and it looks great. She stated there are stricter requirements in the Aquifer Protection Ordinance. Since it is not a legally sanctioned pit (because he was working without a permit) means he should be required to follow the restrictions in the Aquifer Protection Ordinance.

She also had letters from Clay Mitchell, the former planner, regarding the importation of construction material from offsite, which under the current Aquifer Protection Ordinance is prohibited. She has a problem with that. The Conservation Commission stated they did see PVC pipes in some of the stockpiles of soil. People want to know where the product is coming from. Prohibited uses, under the new ordinance, state "disposal, staging, and storage of all solid waste is not allowed". She stated Laura Spector's letter does say that any type of material that is stored and sold to a third party is not allowed. She noted that there was an indication of concern that the existing sites are bringing materials, such as construction materials and fill onto the site and then selling these materials to third parties. They are bringing it in, sifting it, and selling it, which would be a violation of 5.01(D)(5)(a) & (b) of the Zoning Ordinance. Seeing how this is not a grandfathered site at the time this ordinance was passed in 2002, that is her big concern. She stated they should let him excavate, but do not let him take any product in.

Diane Hardy stated she disagreed. She stated the Planning Board has gone through this several times now and she disagreed and the Board's legal counsel disagrees. Mrs. Kwaks stated the Board's legal counsel stated they would be grandfathered only if they were a legally existing operation. She said to let them keep excavating, but he should follow the guidelines of the new ordinance, because he let his permit lapse for five years. She has a fear we are spending millions of dollars at the Tucker well and the McIntosh well to create a new water supply and meanwhile, you don't want to contaminate the existing wells that are operational. She stated you never know what will be hauled in there. She did not want to take that chance. She also had questions about his hours of operation and where he will be parking his

vehicles at the site, because he is currently parking all of his, including those which are more than one and a half ton, off-site at his home, which is in a residential area. She is concerned that he is in violation of the Zoning ordinance. Chairman Shelton stated that is not a Planning Board, but a Code Enforcement issue. Mrs. Kwaks stated if the Board is approving a business for him to run, one of the conditions of approval should be the hours of operation. That was in the original 1984 permit. Chairman Shelton stated they are solely dealing with the renewal of permit. Mrs. Kwaks asked if he had to come back for additional conditions in order to operate the business. Chairman Shelton stated that Mrs. Kwaks would have to talk to the Code Enforcement Officer about those. Those are code enforcement issues.

Mrs. Kwaks asked if Mr. Rosa had indicated on his latest plans where he is burying the stumps. Diane Hardy stated that is on the original 2003 plan.

Mrs. Kwaks stated her concern was they are not made to comply with the stricter regulations of the ordinance, because they were not grandfathered. They should be made to adhere to the new regulations. Her main concern is they are bringing in solid waste. She did not know where that material is coming from and she is concerned about contamination.

Chairman Shelton asked if the applicant had any further information to provide to the Board.

Wayne Rosa stated the pit renewal in 2003 is all explained in letters that Mrs. Kwaks probably did not give to the Board. He did not have them with him, but he is sure they are in the Planning Board's file. It has been explained and gone over several times and resolved. They have been a legal pit since 1984. He also stated he did not bury any stumps. There is a stump pile at the pit that has been there close to 30 years. He talked to the Chairman of the Conservation Commission about the PVC pipe. There seemed to be some confusion. He did not have whole pipes. There might be slivers of pipe. There is no whole PVC pipe up there.

There were no further comments from the public and Chairman Shelton closed the public hearing.

Chairman Shelton stated she recalled, when this renewal came before the Board in 2009, there was a very extensive file and legal opinion, at that time, because the same issue came up. She did not know if this legality over the pit is something the Board wants to investigate further.

Eric Botterman stated this has been vetted several times, attorneys have written letters and he feels they are absolutely grandfathered.

Ed Carmichael asked if they have backup from 2009. Diane Hardy stated there are several letters in the file from legal counsel. There was a period where Mr. Rosa had a permit that expired and he worked with the Town and the Code Enforcement Officer to try to bring the pit into compliance. The result of that was the plan that was submitted in 2003. There is documentation in the file from the Town Planner indicating that the applicant had acted in good faith and had addressed all of the concerns at that point. Given their efforts and bringing it into compliance, they were given the permit to continue. Every three years, when this comes in, the same issues come up and are rehashed again and again. She does have documentation in the file and she is happy to share that with members of the Planning Board, if they would like to come in and review it with her. Ed Carmichael stated he did not see any PVC pieces when he did the site walk. He asked who had written that. Diane Hardy stated that was the Chairman of the Conservation Commission. There was some concrete pipe, but she did not see any PVC. She asked if Mr. Rosa could address that. Mr. Rosa stated there is concrete pipe. He called the Chairman and the member that saw the PVC pipe and they resolved it. He was a little confused where this was located. The CC member saw some little pieces and told me to go down to the back side of the pit. He found several small pieces. They are still there, he will move them, but he left them in case anyone wanted to see them. There is nothing bigger than this (he indicated with his hands about a six to eight inch length) and there are probably five or six pieces that he found.

Elizabeth Dudley stated given the desire to protect the aquifer, she did not know what hardship it would be to bring the pit into compliance as if he was not grandfathered. Mr. Rosa stated the pit is in compliance. Elizabeth Dudley asked if it was in compliance with the latest regulations. Mr. Rosa stated the checklist that the Planner and Code Enforcement Officer

and he went over showed it was in compliance. Mr. Rosa stated every gravel pit has to meet the same requirements. Elizabeth Dudley stated she did not see a difference between him being grandfathered or not grandfathered if he is now following the requirements as if he were not grandfathered. Mr. Rosa stated she did not really want to get into discussing 155E about the grandfathered vs. the permitted. All of the gravel pits, even those that are considered to be grandfathered, have to meet the operational and reclamation standards. They are all on an equal basis, every pit in the state of New Hampshire is. Diane Hardy explained there are two different grandfatherings. Mr. Rosa's is the only pit in Newmarket that is permitted that was not in existence before 1979. It is not grandfathered under the State excavation permit requirements and the Town's. What it is grandfathered for is there is an ordinance on the books that says you shall not have any excavation operations within the aquifer protection area. When that was passed in 2001, Mr. Rosa's pit was in operation and the Town viewed it as an acceptable grandfathered use. The Town worked with Mr. Rosa for probably a period of three years to try to bring it into compliance, to get the plan drawn up and, at the end of the day, the Town and the Planning Board in 2004 were happy with that conclusion. Elizabeth Dudley stated the pit is in a state that would be protective of the aquifer. Diane Hardy stated there is no indication there has been any threat to the aquifer. She and the Code Enforcement Officer reviewed the status of the construction materials that are there. They are accessory to that type of use. There are not large volumes of material being brought in and sold to third parties. It is a very small area where these things have been stored by the Rosa's for about five years now. Elizabeth Dudley stated it did not sound like it would be a hardship to pick up the PVC pipe remnants. Mr. Rosa stated no.

Chairman Shelton asked if Rick McMenimen had any questions on the legality of the permit. He stated no.

Chairman Shelton asked if there were any further comments from the Board. There were none.

#### Action

Motion: Eric Botterman made a motion for a renewal of an excavation permit for Wayne & Janice Rosa for the property located at 421 Wadleigh Falls Road, Tax Map R6, Lot 2 in the B3 Zone, with the following conditions:

1. The applicant provide confirmation of additional barriers and warning signs along the front bank near the entrance and along the rear where the gravel mining slopes about the property line of the Newmarket Sand & Gravel operation be provided to the Town.
2. They continue with their due diligence with respect to maintenance of the entrance and, in the spring of 2013, they add additional crushed stone at the entrance and the driveway grades and swales be shaped as needed to maintain the proper drainage.
3. The pieces of PVC are removed from the site.
4. The prior approval conditions remain in effect

Second: Rick McMenimen

Vote: All in favor

Chairman Shelton mentioned there was a 30-day appeal process.

Acadia Engineers and Constructors LLC/Russell Serbagi Jr., public hearing for an application for Site Plan at 13 Water Street, Tax Map U3, Lot 4, M2 Zone. The proposal is for the redevelopment of the property to include two projects:

- 1) Restoration and renovation of historically significant F. E. Lang Blacksmith building (5,599 SF) ; and
- 2) Construction of four new townhouse units (5,320SF).

Diane Hardy stated she has done a very thorough review of the application and has completed the major site plan review checklist. There were a few items she had identified that needed to be addressed. Tim Nichols, Acadia Engineers & Constructors (AEC) provided a spreadsheet identifying those eleven items and indicating his responses and he has also submitted some additional information. They had been lacking soil data and there was information missing on the acreage of the parcel. The plans did not have a licensed surveyor stamps and signature. There was no information regarding the exact uses within the buildings to determine parking needs. Mr. Nichols was asked to provide the Board with some parking calculations. There were questions about ADA access, about specifications for the dumpster, lighting, snow removal and whether DES permitting would be required for relocation of the sanitary sewer. He was also asked to give additional information on the size of plantings. The town's review engineer has been asked for an estimate to do a technical review of the plans. They have received a check from Mr. Nichols to cover the cost of that review. With the information that the Board now has on file from Mr. Nichols and the revised plans, she would recommend acceptance of the application for technical review.

Chairman Shelton asked about the lot and frontage that was omitted from the first plan. Tim Nichols stated there were a couple of pieces of information that were intentionally omitted from the Doucet Survey plan pending resolving the historic right of way that they discovered during the survey. That has not been resolved. Diane Hardy stated it has already been approved by the Town. Mr. Nichols stated that was correct, it just had not been completed. They wanted to get further along in the planning process.

Chairman Shelton asked if any waivers were needed. Diane Hardy stated she was not aware of any at this point. As they go through the technical review process, they may need waivers.

#### Action

Motion: Eric Botterman made a motion to accept the application as substantially comp

Second: Janice Rosa

Vote: All in favor

Tim Nichols gave an overview of the project. He introduced Curtis Boiven, an architect with AEC. He will address the design aspects of the project. He introduced Peter Michaud, from the NH Department of Historic Resources (DHR). He stated there are two independent projects that are happening. One is the restoration of the historic blacksmith shop and the other part is construction of four townhouse units.

Tim Nichols presented a PowerPoint presentation. He showed the site plan of the property and explained they had developed a preliminary design that was submitted to DHR and they have completed an architectural historic inventory of the building. Part one of that report has been formally submitted and they have shared a copy with the Town. It is a very thorough, exhaustive historical review of the site. The existing building will remain in its current footprint. They will have to improve portions of the foundation. The existing bead and batten board siding will be removed. That was added sometime in the 1960s or 70s. It will be replaced with the original white cedar clapboard siding and trim. The windows will not change, but will be replaced with approved historic replica windows. There will be all new mechanical systems. There will be minor improvements to the existing structure, framing and restoration of the interior space. The bottom of the two story portion of the building will be commercial space. His business will occupy one of the two floors. The other floor will be rented as commercial office space, either as a single or two smaller spaces. The three story section will remain all residential, which is three apartment units. They will own and manage the building as landlord. The parking area to the west of the existing building will be lowered one to two feet, so they can reduce the pitch of the driveway from Water Street and improve drainage. That will be a permeable material, either pea stone or a porous type pavement. The small section of retaining wall that exists now will be removed and will be replaced with a larger engineered retaining wall. They will still have a sidewalk to provide street access along the church and from the Rivermoor parking garage down to Water Street. They are adding a sidewalk along Water Street that will wrap around to the front of the blacksmith shop building. The ADA access will be from the upper parking lot.

He stated they are not extending the project out to the street. In the previous design they had to saw cut 10-12 feet into the street for utilities and a parking reconfiguration. All of the work now is right at the curb on the property line. Features include a geothermal cooling system, most likely solar photovoltaic panels and potentially some small wind turbine units, which are vertical wind vanes, not the big propeller type that most people associate with wind power. They are still seeking USDA grant money to help fund the renewable energy systems through a competitive grant process and they will reapply for another grant from the PUC, assuming it is offered again this year. It is their goal to make the building net zero for a restored historic building. There are none in NH and he was not sure if there were any in New England at this time. It will be a unique, signature structure.

The new development is approximately 90 feet by 32 feet wide. It is a single structure with four separated townhouse units that are two and a half stories each. They will each have parking underneath, two single and two double bay parking underneath. They had to be sensitive to the massing of the building due to the proximity to the existing historic building and make sure that it did not detract from it or overwhelm it. They also had to make this building stand on its own merits, not to try to replicate the existing building or try to make it look like it is a historic building. It is a new modern building and will also be net zero or close to it. They will not be doing any solar panels on the townhouse units. They will utilize geothermal technology. A section of the roof will be a "green" vegetated roof, which will be accessible. The units will be 2 and 3 bedroom units.

Construction on the new building and restoration of the existing building will exceed the current NH State building codes for energy and indoor air quality. They expect to surpass the 2012 codes, which NH has yet to adopt.

There are about six or seven spaces of parking in that area. They will reduce that to three, including a spot that will be handicapped accessible. That will be overflow parking for the townhouse residents. He indicated an area on the plan that is currently paved that will be vegetated to help infiltrate some of the runoff onsite.

One constraint they have struggled with is maintaining necessary access between the two properties for service and emergency vehicles, while at the same trying to curtail some of the casual traffic that cuts through the site on a daily basis. What they have in mind now is a speed table, with cobblestone and a mountable granite curb. They want to make sure it is accessible for police cruisers to get through for patrol.

The waste container pad will be tight, in between the buildings on the property. There will be a five yard compactor unit and recycling bins. Recycling will be for the residents and there will be a separate recycling facility for the other building. Everyone will share the trash compactor unit. They did find a unit that will fit into that space and can be rolled out and dumped for offsite disposal.

He indicated where the lampposts would be. There will be lighting along Water Street and along the front of the buildings. They will be adding wall fixture lighting to help supplement lighting on the front and potentially on the back of the building to provide some security lighting.

They have reduced the impermeable footprint of the site. It is currently approximately 86% and they are reducing that to about 66%. It is their goal to infiltrate all of the stormwater runoff on site. The down leaders for both buildings will drain into a buried cistern in between the buildings and that will be used for irrigation on site. The pavers that will be put down will be permeable type pavers. They discussed with the Conservation Commission trying to be more aggressive and capture some of the water that runs off down the driveway through the boat ramp. They will look at some other methods of doing that. They are constrained by the site. They cannot go much lower than they are now. They are about two feet above the flood plain elevation.

He stated there is an American Elm tree that is over 150 years old on site. It is one of the largest documented American Elms in New England. It is the same size as the largest documented American Elm in New York. It is a significant tree. They had an arborist look at it and he was not certain if it had Dutch Elm disease. He did take a sample and they are waiting to hear. If it does have it, there are things they can do to help preserve it. The National Center for American Elms is in Keene, NH and they will help to maintain that tree.

They know parking is an issue in the downtown area. They can reconfigure the upper lot a little bit, so they will be able to get seven spaces, including a handicapped accessible space in that area. That will be primarily for tenants in the three apartments and parking for the commercial tenants. He went over the calculations. Three units based on the density rates the standard requires, they come up with a total of 19 parking spaces. They have 16, including the garage parking for the townhouse units. That results in a net three offsite parking demand. The notable thing is their peak times are not the same for residential use compared to commercial. If you look at the actual residential peak period vs. the commercial office peak period, there is one hour of peak overlap. There will be a need for some offsite parking. They expect that to be in the municipal parking lot across Water Street. That lot has 19 spaces, three of which have been reserved for boat trailers. It is under-utilized. It is mostly residents that park there, so during the day it is relatively empty. They do not expect to have any conflict in parking between the commercial users and the residential users.

Chairman Shelton asked if they would be requesting any waivers. Tim Nichols stated they would not. They are not subject to stormwater regulations, but there are two levels of standards of stormwater in Newmarket and, based on what they are doing, they will actually exceed the more stringent standard. They recognize the issues affecting Great Bay and it is their goal to do everything they can to improve the water quality and demonstrate to other developers that they can do it economically.

Curtis Boiven stated, architecturally, they are trying to break up the massing and maintain the character of smaller buildings along the waterfront, while maintaining open space along the waterfront and organizing the parking. The townhouses are set back to break up the mass along the wall. There will not be parking in front of the restored building. Tim Nichols stated they did look at adding parking along the driveway and edge of the Riverwalk. There is space to do that, but they are really trying not to do that. They want to keep the Riverwalk as open and accessible as possible and not park cars as a barrier to it.

Curtis Boiven stated there is a proposed green roof on top of the townhouses, which is only accessible from a hatch inside. That will further increase the infiltration of water on the site and make a greener footprint to the building.

The style of the new building contrasts with the historic nature of the existing building yet complements the scale and fits better than a large building would on that site. From Main Street, there is a minimal effect on the view. With the parking garage right there, you cannot see the water. The building only goes 2/3 of the way across the parking garage.

Chairman Shelton opened the public hearing.

Rob Phillips, President of the Rivermoor Landing Condominium Association, stated they have met with Tim Nichols several times and have been before the Board once. He understands this will go to a TRC. He asked what the date of that meeting will be. Chairman Shelton explained this hearing will be continued to December 11. Mr. Phillips stated Tim keeps them posted of TRC meetings. He stated they will be looking at the effects of the townhouse building being located so close to the parking garage. There are issues that will come about from that. He expects those will be discussed in the TRC. Those issues are, if people needed to exit the garage in an emergency, they will be able to get out unimpeded behind the townhouse. There are other issues and they have discussed them with Mr. Nichols. He stated those will be appropriate for the TRC. They were glad to see a parking calculation. Their concern is any underage in parking provided vs. parking required will spill over onto abutting properties. They went through this with the mills and their parking requirement was changed and put less pressure on Rivermoor Landing. He stated they always had an issue with people crossing over Mr. Nichols' property to get onto the Rivermoor property, who didn't belong on either property. A lot of people pass through. This will be mitigated by what Mr. Nichols is proposing. He stated they will ask Mr. Nichols to see that the aisle that is used for the passage of safety vehicles is set up so it does not interfere with current parking. There are some parking spaces that are immediately off of that table. They need to look at both properties. He stated the other item is saving the elm tree. He has discussed with Mr. Nichols saving the maple trees that exist behind the townhouse location. They would work with the applicant on mitigation or replanting trees.

Jim Wibel, Vice President of the Rivermoor Landing Condominium Association, stated he had some other issues. He stated he was at the ZBA meeting and he was wondering what the numerical footage was for the new setbacks. He said it was stated they would be within two feet of the boundaries on two sides. Already there is a corner of their property that



is within a foot of the old building. Chairman Shelton stated they would make sure the TRC had that information. He stated there was a safety issue with the darkness of the garage and a penchant for teenagers to use the garage. They regularly have to call police to remove teenagers who go in there to smoke and sit. It is out of sight and out of the way. He called a couple of times last winter and others have called. He felt it was an inviting, out of the way place. It is enclosed and below ground on two sides, the south and west sides. The only open side is the one that will be behind the townhouses. There will be a trash compactor and the Rivermoor dumpster is there, as well. The north side has a half wall, so there is some light coming in. This will change the amount of light coming in and they think it will make the garage more appealing to teenagers. There are women in the condo association who are afraid to park in there now. They believe this will make that worse. There is a garage maintenance issue. The garage was rebuilt in 2008. It was minimally engineered. They cannot have public gatherings on the bridge, because the pounds per square foot it can hold is below what would be required. The garage will need to be rebuilt probably every 20-30 years. This leads to an access issue along the side behind the proposed townhouse. He brought a photo and showed it to the Board. It shows scaffolding and machinery on the side where the townhouses would be when it was being rebuilt. This would significantly impede the ability to rebuild the garage. It was a six figure plus job and he hopes the locating of townhouses there will not make it more expensive to rebuild it in the future. He stated vehicles do catch fire, there hasn't been one in the ten years he has been there, but it could happen. Having it underground on two sides and fully enclosed with a little bit of air to get in poses a fire safety issue. People and vehicles could get trapped. He asked how fire equipment would get in there if there was a vehicle fire. There is a garage lighting issue. If this is permitted, they would probably have to have an expensive rewiring. It seemed to him this was the biggest building that could be built there. It could be a smaller building.

Martin McKinsey, 6 Washington Street, stated he had some questions about the new structure. He stated it was described as three stories on the plan and two and a half by Mr. Nichols. He asked what two and a half stories signified. Mr. Nichols stated the bottom floor is all garage. The second floor would be a living floor and the upper floor comes across halfway. Height-wise they cannot occupy the front of it, because of the slope of the roof coming down lower. Mr. McKinsey stated, at the last meeting, Mr. Nichols had stated the height of the building over the parking area would be 7-8 feet. From the design, it looked like considerably more, at least a floor and a half. He was concerned about the visibility from Main Street and the intrusion of the view of the woods across the river. He asked what material the new structure would be made of. Mr. Nichols stated it would be white cedar shingle. Mr. McKinsey asked if there was any possibility of putting some green border between the building and the parking area. Mr. Nichols stated their goal is to maintain the existing maple trees. They have no plans to plant any trees in that area. Mr. McKinsey asked about the green space on the roof being used as a patio that can be used at the tenants' discretion. Mr. Nichols stated it would be used at the tenants' discretion, but will not be easily accessed. There will be a ship's ladder through a hatch. Mr. McKinsey asked if there was any limit to what someone could put up there that would be visible from the street. Mr. Nichols stated that would be restricted by the Association code. Those particular units will be privately owned.

Stacia Sower, Rivermoor Landing, asked if the condo building would be soundproofed for the residents. She stated there is a parking garage right behind their windows and cars going in and out at all times. Mr. Nichols stated the insulation will be sprayed in. Ms. Sower stated people living there will complain if they can hear the noise. Mr. Nichols stated those wall systems are much higher insulated and acoustical than any of the adjacent existing buildings. Ms. Sower stated the new building will have their waste container, her building has theirs, and she did not know how the big dumpster truck will squeeze around that little space and get her building's garbage out of there and be able to access it. She felt there would be an issue when we have snowstorms. They have trouble dealing with the snow. She stated she liked the design of the first building where Joyce's Kitchen was, but the second building is problematic.

Mark Boutilier, 303 Ash Swamp Road and a Trustee of the Newmarket Community Church, stated they still fully support this project, lock, stock and barrel. As he was sitting listening to the "doom and gloom", he reflected on the stained glass Town Seal on the wall in the Town Council Chambers. He believed what was being proposed would look like the Town Seal. He stated right now it did not. It looked like some of the seal with a parking garage somewhere in the middle, something like a missing tooth. He believed this elegant and thoughtful proposal was a blessing. He stated that is what he is hearing every Sunday at church, when people talk about how excited they are about the trees and the blacksmith shop, about finishing off the waterfront, like the Town Seal. People walk across Heron Point and see this side of the river. He hopes people can overcome the awful, scary, doom and gloom issues and focus on this beautiful project other people are very happy about.

There were no further comments and Chairman Shelton closed the public comments.

Chairman Shelton stated they would like to move this forward to Technical Review Committee (TRC). Rick McMenimen and Eric Botterman were both willing to be on the committee. She stated, other Planning Board members review the materials that are submitted against our regulations, should forward any questions or comments to Diane Hardy or one of the TRC members.

#### Action

Motion: Eric Botterman made a motion to continue the application to December 11, 2012 at 7:00 p.m. in the Town Council Chambers

Second: Janice Rosa

Vote: All in favor

Newmarket Mills LLC - Public hearing on a revision to the approved site plan, which was approved on October 27, 2009, for the Newmarket Mills, LLC, located on Main Street, Tax Map U2, Lots 365, 366, 367, in the M1 Zone and Tax Map U2, Lots 56C, 57, 60A, 60B, and 61 the B1 Zone. This involves the redevelopment of the Newmarket Mills for mixed-use development, including public space, and with parking as shown the "Record plan for the Newmarket Mills Redevelopment, dated September 10, 2012, revised September 18, 2012. The public hearing involves waiving off-site traffic improvements requested by the Rivermoor Landing Condominium Association and the reduction of the corresponding performance guarantee provided by the developer.

Chairman Shelton stated the last sentence in the application summary is being struck, "The public hearing involves waiving off-site traffic improvements requested by the Rivermoor Landing Condominium Association and the reduction of the corresponding performance guarantee provided by the developer." That is a Town issue. The Town deals with bonding and performance guarantees, so the Board will not be speaking to that.

At this point, the Board realized they had missed an item on the agenda and decided to move forward with the scheduled agenda item and come back to this application afterward.

Donald F. Tucker/The Nature Conservancy/Southeast Land Trust of NH - Public hearing for an application for Subdivision/Boundary Line Adjustment involving lots at Neal Mill Road. The lots involved are Newmarket Tax Map R7, Lot 4-2, R1 Zone, owned by Donald F. Tucker and Newmarket Tax Map R7, Lot 31 R1 Zone and Newfields Tax Map 212, Lot 4 both owned by Southeast Land Trust of NH. The proposal is to revise the parcel boundary of Tax Map R7, Lot 4-2 to create an approximately 60-acre addition to the Southeast Land Trust's "Piscassic Greenway". The remainder of the land will be retained by the current owner, Donald F. Tucker.

Diane Hardy stated she reviewed the application and there were a couple of items that surfaced as incomplete or were not included on the plans. Those involved information regarding wetlands, floodplains, boundary documentation for the entire lot, and setbacks.

A request for waivers was received from Doucet Survey today. They are requesting waivers from soils mapping, setback requirements, 100-year flood and for complete boundary survey. She did not see wetlands mentioned. Bill Doucet, Doucet Survey, stated the soils mapping includes wetlands. Diane Hardy stated, given that the proposed plans for this land are to put it into conservation, detailed documentation is not necessary. They do have general information. She recommended the Planning Board accept the application and grant the waivers, as requested by the applicant.

#### Action

Motion: Eric Botterman made a motion to accept the application as substantially complete

Second: Rick McMenimen

Vote: All in favor

Bill Doucet stated he represented three parties, Southeast Land Trust, the owner of an adjacent 250+ acre conservation parcel; Donald Tucker, who owns a 120 acre parcel, from which they are looking to transfer 60 of those acres to Southeast Land Trust to add to their 250+ acre adjacent parcel; and The Nature Conservancy. In attendance this evening is Brian Hart, from Southeast Land Trust, Duane Hyde, from The Nature Conservancy, and Donald Tucker, the landowner.

He showed a color plan indicating the three areas being discussed. He explained where the land was on the plan.

Chairman Shelton opened the public hearing.

There were no public comments.

Chairman Shelton closed the public hearing.

Diane Hardy recommended approval without conditions.

Action

Motion: Eric Botterman made a motion to grant the waivers for Section 4.10(B)(2) Soils Map, Section 4.10(D) Setbacks, Section 4.10(E) 100-year Floodplain of the Newmarket Subdivision Regulations and the Subdivision Regulation Checklist Boundary Survey

Second: Janice Rosa

Vote: All in favor

Action

Motion: Eric Botterman made a motion to approve the application

Second: Rick McMenimen

Vote: All in favor

Donald Tucker, 22 Neal Mill Road, stated he has owned the land for seventeen years and has tried five times to do something like this and it gives him a great deal of pleasure, for the residents of Newmarket and Newfields, to combine this with other lands of the Southeast Land Trust. He thanked the Planning Board, Duane Hyde and Brian Hart for putting

their end together. Chairman Shelton thanked Mr. Tucker for serving on the Conservation Commission.

Newmarket Mills LLC - Public hearing on a revision to the approved site plan, which was approved on October 27, 2009, for the Newmarket Mills, LLC, located on Main Street, Tax Map U2, Lots 365, 366, 367, in the M1 Zone and Tax Map U2, Lots 56C, 57, 60A, 60B, and 61 the B1 Zone. This involves the redevelopment of the Newmarket Mills for mixed-use development, including public space, and with parking as shown the "Record plan for the Newmarket Mills Redevelopment, dated September 10, 2012, revised September 18, 2012. The public hearing involves waiving off-site traffic improvements requested by the Rivermoor Landing Condominium Association and the reduction of the corresponding performance guarantee provided by the developer.

Eric Chinburg, Newmarket Mills LLC, gave an overview of the revision. He stated when they first started permitting for this project two or three years ago, they worked with Rivermoor Landing on improvements to their property in response to their concern regarding increased traffic across their property. Subsequently, the mills changed their parking to substantially reduce parking on site, which would reduce traffic through the Rivermoor Landing property. They have agreed that makes it so the improvements shown on Sheet C9 of the plans are no longer necessary. Rivermoor Landing and Newmarket Mills LLC are asking that those improvements be waived.

Chairman Shelton stated they had a letter from Rivermoor Landing's legal counsel and a letter from the Town Engineer.

Diane Hardy stated the original traffic engineers spent quite a bit of time reviewing the offsite improvements. They wanted to make sure that, by deleting these particular improvements, it did not jeopardize the other traffic calming improvements that were planned. Mark Sununen, with VHB, reviewed it and sent a letter dated November 9, 2012. She reviewed his comments. There is a reduction of traffic, because the mills will not have parking in the lower level of the J, K, L, and M Buildings. His traffic engineer provided a report to that effect and Mr. Sununen reviewed it. He concludes with the total traffic expected in the mills, which will be less than what was approved, the traffic using the driveways will be less. He stated there have been improvements made recently, including the mirror that has been placed on the southeast corner of the building. He stated that was an acceptable mitigation measure. He concludes that the reduction in offsite parking makes the timing of these enhancements less critical and they concur with the reduction in onsite parking and the decrease in traffic volume. Many of these enhancements are still valid and could be pursued in the future. Diane Hardy believed that was part of the agreement that Mr. Chinburg reached with Rivermoor. Given that, she recommended that the Planning Board approve the change to the plan. Administratively, this revision will reduce the funding the Town is currently holding, which is about \$18,000 that was kept as a performance guarantee to assure the improvements would be made.

Chairman Shelton opened the public hearing.

There were no comments.

Chairman Shelton closed the public hearing.

Elizabeth Dudley asked if she could see Plan Sheet C9. Diane Hardy gave her a copy. Chairman Shelton explained C9 would just identify the area involved. She stated the background is a lot of those improvements were at the request of Rivermoor Landing and because of the traffic count that was going to be there at the time.

Action

Motion: Eric Botterman made a motion to approve the proposed revisions to the site plan based upon the information provided by the Town Engineer and no objections from Rivermoor Landing

Second: Janice Rosa

Vote: All in favor

#### Agenda Item #5 – Other Business

Review of Draft Language for Proposed Zoning Change changing portions of the B-1 one to M-2 Zoning classification and setting up formal public hearing date for revision.

Chairman Shelton stated they had good feedback from the Board and amendments were made.

She stated the zoning change was not made all the way to the Durham town line, as they are trying to keep the larger lots located there intact. These are lots that someone could develop into multi-family if they were changed to M2, which is not the intent.

She stated they are hoping to move this to a public hearing on November 27.

Rick McMenimen asked about one condition under Section B(2)(b)(ii), "For acceptance by the Planning Board of a market analysis that demonstrates the feasibility of adding multi-family housing in a community which already has an overabundance of multi-family housing." He asked why they are looking at allowing multi-family there, if there is too much already. Chairman Shelton stated the premise is that we know we are not getting any commercial development in these areas now, because they are all zoned B1 with no residential uses allowed. She stated we have heard from many property owners who are trying to redevelop properties that the numbers do not work to have strict commercial use for many reasons, predominately the size of the lots and the ability to have an economically feasible development without a mixed use component. The Board has to look at population trends and decide where we want to house the projected population of Newmarket. There seems to be a consensus that we keep it in the urban area. Rick McMenimen stated the wording sounded like the Board was trying to do something that did not make any sense. Chairman Shelton stated that wording is currently in the ordinance. Diane Hardy suggested that wording be struck. Rick McMenimen stated he would leave out "which already has an overabundance of multi-family". Then, the sentence would make more sense.

Rick McMenimen stated he had a question about the Permitted Uses section. He asked if commercial amusement covered the bowling alley. Chairman Shelton stated it did cover that.

Diane Hardy went over the changes to the Permitted Uses Table. She stated the "student housing" category was being deleted, because it really did not mean anything. Right now, students can live in single-family units, duplexes, multi-family. The Board wants to get away from the notion that maybe the zoning ordinance is discriminating against student housing. Under the multi-family residential uses within the M-2 district, there is now a footnote. That ties back to the recommendations that are being made for allowing multi-family use by Special Use Permit issued by the Planning Board and restrictions on mixed-use development that has three or greater residential units. Research and development would be allowed in the M-2 district and commercial amusement would be allowed in B-1 and M-2 districts. Several fraternal organizations are in Newmarket and all are located in B-1 or M-2 Districts. We want to make sure the table is consistent with existing land uses. Office complexes were included in B-1 and M-2. Mixed use requirements tie back to the revisions.

Elizabeth Dudley asked what flexible use development was. Diane Hardy stated that is a very general use allowed in the B-3 by Special Use Permit. Elizabeth Dudley wondered if it should be allowed in M-2. Diane Hardy stated the description of flexible use was very vague. Chairman Shelton stated they did look at that as a committee and decided to put the B-3 zone on as a secondary priority to address in the future.

Diane Hardy went over the Dimensions Table changes. She stated the M-2 zone having a 50-foot height district was too liberal and the Board agreed it made sense in M-1 zone, but was not consistent with the character of the current M-2 zone. It was recommended it be changed to 35 feet. In order to allow flexibility, it was suggested that within M-2 District the Planning Board would have the option to waive the road setback requirements, side/rear setbacks and height restrictions in order to match the conformity to adjacent buildings. It gets at the idea of form based zoning, where instead of having a prescribed standard for setbacks, you look at the character of the neighborhood and try to match that. Chairman Shelton stated it incorporates the footnotes. Those that would be under Special Use Permit would be multi-family residential with three or more units and mixed use development with three or greater residential units. She would like to hear if people feel okay about mixed use development with three units. Eric Botterman stated he was fine with three. The one thing that concerns him is he did not think the town wants the Planning Board to make it easier for someone to come in with four or five lots and put up fifty condo units.

Chairman Shelton stated the biggest change was the Special Use Permit process. This would be coming through the Planning Board and applicants would not have to get a Variance first. That is where the conditions come in. The applicant would have to prepare and the Board would have to accept a fiscal impact statement. The applicant needs to demonstrate a positive fiscal impact on the town. That is a revision of the current ordinance. This gets into the issue of whether it is an ongoing, viable type of use being proposed. The Planning Board would determine that.

She stated the other items came out of some of the other sections. They had the downtown commercial overlay district and they are deleting some of those paragraphs, because they will be in M-2 section of the ordinance. Residential units would require two onsite parking spaces. Multi-family residential use with no commercial use in the building shall be limited to four residential units within a single building. They did not want someone to come along and be able to amass several small lots and do another Bennett Way. Eric Botterman asked what would prevent someone from putting two buildings on a lot, with four residential units in each building. Chairman Shelton stated that would be if the acreage and density would work. Eric Botterman stated his concern was if they had plenty of space after amassing five or six lots. Chairman Shelton stated that was why on the map they have excluded the northern end of the Route 108 corridor. They believe the lots are just too big there to allow these changes.

Chairman Shelton read the section stating no residential units will be on the first floor in buildings with frontage on the street. This was from the downtown commercial overlay district and they rolled that language into the requirements for the M-2 District.

Chairman Shelton explained under the section of the Ordinance titled "Design Standards", these are just additional standards for non-residential development or development with three units or greater. This is to keep in perspective the pedestrian environment and the character of the village.

Onsite parking not being allowed in the frontage was added. This was to move the parking to the back and sides, rather than the front of the building.

Diane Hardy mentioned they did delete the prohibition on drive through facilities, so they are now allowed in the M2 zone.

There was a discussion of how burdensome a fiscal impact analysis would be. The Mom and Pop operations were exempt. If an analysis is done by a professional, it is expensive. Developers often do them themselves. The Planning Board needs to be comfortable with what is submitted. If the Board is questioning the information, they can ask the applicant to provide more. Diane Hardy stated, when they did the M-1 zoning change, a caveat was added that the Planning Board could waive those requirements, as appropriate. The Board decided to add that to the language.

Chairman Shelton spoke about access management. She stated this was the whole idea of not having multiple curb cuts off Route 108. The curb cuts are limited to one lot. Even if someone subdivided a larger lot or adjusted a boundary line, that original plot of land would be accessed by one curb cut. Eric Botterman stated they need to be careful, because access to Route 108 is controlled by the State of New Hampshire Department of Transportation (NHDOT). We cannot usurp their authority. We don't have to approve anything, but, if the State is going to give someone two access points, that is what they are going to get. Diane Hardy stated the State has entered into cooperative agreements with some municipalities as part of corridor management planning strategy. They will honor the requests of the local governments to

limit the number of driveways and encourage the development of feeder roads. Newmarket is not participating in that program, at this point. Eric Botterman stated he was not disagreeing with the concept, but the Board needs to have this conversation with NH DOT about this. Chairman Shelton asked if the Town had an ordinance saying one curb cut and the State gives someone a driveway permit for a second one that usurps our site plan review. Eric Botterman stated that was correct. Eric Botterman stated the Town needs to have an agreement with the State, if that is the case. Most of the lots there are fairly small, so with the State regulations they will only get one access point. Chairman Shelton stated what the Board wanted to do was not have them get two or three curb cuts if someone merges the lots. They are trying to take away some of the impact on the existing highway. Eric Botterman stated as an example, if you have three pieces of property that have three driveway accesses and the lots are combined into say a lot with 400' of frontage, the State will more than likely give the developer three curb cuts, even if they are combined into one lot. In any event, the Board should have that discussion with the State. He offered to contact the State. Diane Hardy stated we could also look into the option of having a cooperative agreement.

Chairman Shelton stated it would be worth talking to the State about how the Board should deal with the elimination of curb cuts by bringing in more of these private roads running perpendicular that would access different properties. The whole idea is this applies to multiple lots to limit it to no more than four lots with one road. Eric Botterman stated they could get a variance if someone was proposing something with six lots. He stated he would look this over to see if he saw any problems if they revised the wording to encompass more than four lots.

Chairman Shelton stated regarding the mapping, the only thing that changed was keeping the northern section of the northern corridor on Route 108 as B-1. She stated Pulaski Drive is a large lot, but is already built out with apartments. The northern section, where the 3 North Main Street developer wanted to merge these lots for a community shopping center, would remain B-1. So, someone could not go up and do another Pulaski Drive with multiple buildings with apartments. The same is true on the northwest side of Route 108. Most of these lots have small single family houses, other than the apartments right at the town line.

She stated there were a few lots that were R-2 on the southern corridor coming from New Road. They would be made M-2, as they were islands and changing them would make them more consistent with the area. This will be a more phased approach of redevelopment along Route 108 vs. what everyone was hoping for when the zoning went from strictly residential to B-1.

Diane Hardy explained, if the Board makes substantial changes in the wording of the zoning at this public hearing, there would have to be another public hearing. Chairman Shelton stated the biggest changes would be to the section stating no more than four lots shall access Route 108 by a private road and no further subdivision. Diane Hardy stated those would be substantial. Eric Botterman stated if any changes were made that were more than fixing grammatical errors or clarifying something, then another public hearing would have to be held.

Chairman Shelton asked if people needed time to think about the language that says you cannot further subdivide. Eric Botterman asked how Chairman Shelton felt about the four lot restriction. She stated she was thinking along the lines of pork chop subdivisions with three lots and one access. If you are going to merge or re-subdivide, she would like to encourage shared access. She stated it may not have to be limited to a specific number of lots. She felt subsection ii covers it. The Board was fine for language to be deleted.

Chairman Shelton stated the Board could decide to amend this further at the public hearing.

Diane Hardy stated under the RSAs you do not have to notify each property owner and abutters. They have been notified of work sessions on this topic. She asked if the Board felt they should make an extra effort to get the word out to the property owners. Eric Botterman stated the Board should send a letter. Chairman Shelton stated it did not have to be certified. Diane Hardy stated they will send letters to the property owners involved in the changes regular mail. Chairman Shelton stated that was correct. She stated these changes have been discussed at meetings and, if people are interested, they should be following this.

Diane Hardy went over the process involved in adopting an amendment to the Zoning Ordinance.

## Committee Reports

Chairman Shelton stated, unless there was something critical to report, this will be moved to the November 27 meeting.

## Agenda Item #6 – Adjourn

### Action

Motion: Janice Rosa made a motion to adjourn at 9:44 p.m.

Second: Eric Botterman

Vote: All in favor