**NEWMARKET PLANNING BOARD MEETING**

**DECEMBER 8, 2020**

**MINUTES**

Present: Eric Botterman (Chairman), Val Shelton (Vice Chairman), Diane Hardy (Town Planner), Bill Doucet, Sarah Finch, Michal Zahorik (Alternate), Scott Blackstone (Town Council ex officio), Toni Weinstein (Town Council ex officio Alternate), Jamie Bruton (arrived late)

Absent: Ted Seely (Alternate), Jane Ford

Roll Call: Val Shelton-present/alone, Scott Blackstone-present/alone, William Doucet-present/alone, Michal Zahorik-present/alone, Sarah Finch-present/alone, Eric Botterman-present/alone, Toni Weinstein-present/alone

Eric Botterman, Chairman opened the meeting at 7:01 p.m. and read a statement regarding the Right-to-Know law and electronic/virtual meetings per Governor’s Emergency Order #12 pursuant to Executive Order 2020-04. This meeting is being held in the Town Hall auditorium and also via Zoom for participants and members of the public who wish to attend remotely due to the Covid 19 pandemic. The Chairman then appointed Alternate Michal Zaborik to sit in for Ted Seely.

**1. Pledge of Allegiance**

**2. Public Comments**

None. Public Comments closed at 7:07 pm.

**3. Review and Approval of Minutes**

**a. 11/10/2020**

**Action**

**Motion: Val Shelton made a motion to approve the minutes of 11/10/20**

**Second: Bill Doucet**

**Vote: Val Shelton, Scott Blackstone, Bill Doucet, Eric Botterman**

**The Chairman conducted a Roll Call vote.**

**Motion carries. Minutes were approved.**

**Michal Zahorik and Sarah Finch abstained**

**4. Regular Business**

**a. Public hearing to amend Chapter 32 Zoning of the Municipal Code of the Town of Newmarket, NH, in accordance with RSA 675:6, and RSA 675.7. Amendments are being made to the floodplain regulations in the Town’s ordinances in order to bring them into full compliance with National Flood Insurance requirements and to adopt the new Flood Insurance Rate Maps (FIRM), effective date of January 29, 2021 and the corresponding Flood Insurance Study (FIS). The amendments clarify existing regulations, update terminology and definitions, and add new language to reflect engineering requirements related to development within the designated Regulatory Floodway. Changes are also being proposed to Appendix A Subdivision Regulations, Section 3.13 titled “Floodplain Management”, and Appendix B, Site Plan Review Regulations Section 3.12 titled “Floodplain Management”. The full text of the proposed amendment is available at the Planning Office of Newmarket Town Hall during normal business hours and online at** [**www.newmarketnh.gov**](http://www.newmarketnh.gov)**. Property owners, abutters, interested partis and the public are invited to attend.**

Diane Hardy said the Town needs to formally adopt the new Federal Emergency Management Floodplain maps as part of its Floodplain Ordinances to use as the basis for the Floodplain Management Overlay District. Changes to the ordinance are primarily editorial with updates to data to clarify permitting requirements for new construction, substantial improvements, and manufactured housing. There are also definition changes. For example, no longer called the “100-Year Flood Elevation” and is now the “Base Flood Elevation”. All elevation data is now using the NAVD (North American Vertical Datum) of 1988 and there are other changes to bring our regulations into compliance with new minimum floodplain regulations recommended by the NH Office of Strategic Initiatives.

Diane Hardy said there is a change in new Floodplain Maps for Newmarket which now include a Federal Regulatory Floodway (portion of special flood hazard district) with new requirements for developments in areas needing special engineering so as to not increase flood levels. Maps are posted in Auditorium this evening; however, they are also available in the Town’s Planning Office, and on various State and Federal web access through the internet.

Diane Hardy said in addition, there are changes to Site Review Regulations and Subdivision Regulations which are fully in the domain of the Planning Board to review and adopt after the Public Hearing tonight, whereas the Zoning changes will be forwarded to the Town Council for their review and adoption. They had their first reading on December 2, 2020 with a Public Hearing scheduled for December 16, 2020.

Valerie Shelton recommended that under *D. Standards* they remove the phrase “to all new construction or substantial improvements” from the draft as it is covered elsewhere, and is only one element in that paragraph, and Diane Hardy agreed. The language to be changed is as follows:

***Section 32-158 Zoning*** in the last sentence under (d) paragraph Standards: remove the language that reads “to all new construction or substantial improvements’ to clarify that the Floodplain overlay requirements apply to all development as stated below in subparagraphs 1 through 9.

***Eric Botterman opened the public hearing.***

No comments or members of the public present at the Town auditorium or via Zoom.

***Eric Botterman closed the public hearing at 7:20 p.m.***

**Action**

**Motion: Val Shelton made a motion to amend draft item 32-158 (d) (in the the Zoning Ordinance) by removing the phrase “to all new construction or substantial improvement”**

**Second: Scott Blackstone**

**Vote: Scott Blackstone, Bill Doucet, Michal Zahorik, Sarah Finch, Eric Botterman, Val Shelton, Eric Botterman; Jamie Bruton**

**abstained. Motion carried.**

**Action**

**Motion: Val Shelton made a motion to forward as a recommendation from the Planning Board to the Town Council Section 32-158 Floodplain Protection Overlay District draft, as amended, for Town Council approval.**

**Second: Bill Doucet**

**Roll Call Vote: Bill Doucet, Scott Blackstone, Michal Zahorik, Sarah Finch, Eric Botterman, Val Shelton in favor; Motion carries and is voted unanimously, Jamie Bruton abstained**

**Action**

**Motion: Val Shelton made a motion to approve and adopt the changes to Subdivision Regulations**

**Second: Bill Doucet**

**Roll Call Vote: Val Shelton, Bill Duocet, Scott Blackstone, Michal Zahorik, Sarah Finch, Eric Botterman in favor, Motion passes unanimously, Jamie Bruton abstained.**

**Action**

**Motion: Val Shelton made a motion to approve and adopt the c changes to Site Review Regulations**

**Second: Eric Botterman**

**Roll Call Vote: Val Shelton, Bill Doucet, Scott Blackstone, Michal Zahorik, Sarah Finch, Eric Botterman in favor, Jamie Bruton abstained. Motion passes unanimously.**

1. **77 Hersey Lane, LLC-Walter Cheney/Chinburg Builders, Inc.-Continuation of a Public**

**Hearing for an application for an 11-lot Open Space single-family subdivision, with municipal water and sewer services, on a twelve-acre lot. The lot is located at 77 Hersey Lane, Tax Map R4, Lot 3, R2 Zone.**

Eric Botterman said a TRC meeting was held last week to review comments from our Town Engineer and based on those comments the Applicant has made and submitted a revised set of plans on December 3, which have now been reviewed by Underwood Engineers with comments received just this afternoon on the latest submittal. He noted that time for the Board is needed to review responses and comments. The applicant, however, can update the Board tonight on recent changes and then Board can then discuss and possibly vote on waivers and meet again on December 22nd to review this. A letter was also received from LRAC (Lamprey River Advisory Committee) asking DES to not approve the Alteration of Terrain (AOT) Application.

Bill Doucet recused himself.

Christian Smith, the project engineer from Beals Associates, representing the Applicants, shared the screen with the Board and presented the revised site plan set to the Planning Board. He said minor changes were made to the recordable site plan sheet based on Underwood’s comments; clarifications have been provided for some of the easements; they have relocated some drainage and sewer runs to get as much of that infrastructure into the public right-of-way, as possible. He said Underwood Engineers also wanted additional clarification on who would be responsible for the maintenance of the drainage facilities within the remaining easements, which has been addressed in the plans. A few revisions were made to the topographical plan for sidewalks and water lines; it was noted that this information already existed on open space plan. In the utility plan Catch Basins 2 and 1 have been relocated. Christian Smith said some revisions have been made to the grading profile based on information from UEI and Rick Malasky, Public Works Director, where there is a transition from the existing Class 5 Hersey Lane down to existing the gravel road which will remain a Class 6 Road. No-parking signs, stop signs, and street signs were added in the location of Durell Drive. The catch basin on Lot 7 has been diverted to catch basin 3 instead of being direct-piped into the plunge pool. They have modified the sewer manhole to be within the right-of-way and limited the number of forced mains from the buildings. He said they have now super elevated the entire roadway eliminating the culverts under the driveways upon the request of the Public Works Director. UEI has reviewed this and takes no exceptions to revisions made. There were no further changes to the erosion control plan. The details are basically the same, although revised tip downs details has been added. They have changed the “wood block” attached to the galvanized posts to a black composite block as preferred by the Rick Malasky.

Val Shelton asked Mr. Smith if he was showing drip edges on lots 2, 4, 6, and the duplex and he said that was correct.

Eric Botterman said it seems that they have addressed everything brought up at the TRC meeting and by Underwood Engineers, but there are still questions about the easements and said the Board just needs to make sure the Town’s interests are taken care of in the final easement documents. Also, there is a need to modify the road profile in the vicinity of the transition between the existing Class VI road and the entrance to the subdivision road.

**Waiver Requests:**

**1. Waiver to Newmarket Site Plan Regulation Section 4.08 to allow a plan scale of 1”=50’ whereas 1”=100’ is required.**

The Planning Board felt the proposed subdivision plans were acceptable at the scales presented as the plan’s intent is clear.

**Action**

**Motion: Val Shelton moved to approve the waiver as presented**

**Second: Sarah Finch**

**Roll Call Vote: Val Shelton, Sarah Finch, Scott Blackstone, Michal Zahorik, Jamie Bruton, and Eric Botterman in favor; Bill Doucet abstained. Motion carries, the waiver is granted.**

**2. Waiver to Subdivision Regulations Section 3.02.B.4, Road design standard, minimum width of pavement, to reduce lane width from regulated 12 feet to 11 feet.**

**Action**

**Motion: Val Shelton moved to approve the waiver as presented.**

**Second: Sarah Finch**

**Roll Call Vote: Scott Blackstone, Michal Zahorik, Eric Botterman, Val Shelton, Sarah Finch, Jamie Bruton in favor; Bill Doucet abstained. Motion carried, the waiver is granted.**

**3. Waiver to Subdivision Regulations Section 3.02.B.5 Road design standards, request that cul de sac be allowed to be offset from center line of roadway and have a super elevated grade.**

Christian Smith said included with this waiver is to allow an elevated grade away from the center of cul de sac in accordance with state road regulations

**Action**

**Motion: Val Shelton moved to approve the waiver as requested by the applicant in their letter dated March 9, 2020 to Section 3.02.B.5.**

**Second: Sarah Finch**

**Roll Call Vote: Scott Blackstone, Michal Zahorik, Eric Botterman, Val Shelton, Sarah Finch, Jamie Bruton in favor; Bill Doucet abstained. Motion carried, the waiver is granted.**

**4. Waiver to Subdivision Regulations Section 3.02.D.5 Road design standards, respectfully request that the slope at end of road be allowed to be 2:1 when 3:1 is required by regulations.**

**Action**

**Motion: Val Shelton moved to approve the waiver as presented.**

**Second: Sarah Finch**

**Vote: Scott Blackstone, Michal Zahorik, Eric Botterman, Val Shelton,**

**Sarah Finch, Jamie Bruton in favor; Bill Doucet abstained. Motion carries, the waiver is granted.**

Eric Botterman said they needed to schedule a meeting for December 22, 2020 to take up this application and asked for Board’s availability. He asked Diane Hardy to set up the Planning Board meeting for December 22, 2020 at 7:00 pm.

Diane Hardy asked to discuss the negative letter of December 7, 2020 from the Lamprey River Advisory Committee (LRAC), corrected some of the inaccuracies in the letter, and asked for Luke Hurley, Senior Wetland Scientist of GOVE Environmental, (the Applicant’s wetlands and wildlife specialist) to attend tonight’s hearing for his response and comments.

Luke Hurley said the process with an Alteration of Terrain (AoT) Permit is to review the application, and submit to the NH Fish and Game Department a habitat impact assessment. He said Fish and Game is asking us to have biologists and consultants visit the site, do an analysis of the Fish and Game website for various species per habitat and put together a list of threatened species, walk the site for a full day and document the various habitat types. He then provides his thoughts, as a professional, on what would be there for threatened and endangered species and provides a full report with a description of what is being proposed at the site and speculates on the wildlife impacts and recommends proposed conservation measures to mitigate those impacts. The Fish and Game Department then reads his report and may agree with some measures and may ask for more. If they agree it ultimately goes back to Alteration of Terrain (AoT) Bureau and they issue the permit, sometimes with conditions.

Luke Hurley said he did document in his report the conservation measures being put in place with 9 acres of the 12.8-acre site, being preserved as open space with direct connectivity between that open space and land to the south and west. For the prime wetlands they are keeping a 150-foot buffer which is more than the 100 feet that is normally required. He agrees it is an ecologically sensitive area but did not think AoT would deny this because of any wildlife issues.

Patrick Reynolds of the Conservation Commission said normally if there was a pending wetlands application before the Conservation Commission, they would expect the applicant would respond to the questions LRAC raised. He felt the reason LRAC sent the strong letter is there is not a lot of development this close to the Piscassic River which is a Class A stream that runs through Newmarket and are probably sensitive about development that occurs in that corridor.

Eric Botterman explained that if the Planning Board votes to approve this project it would be subject to obtaining the AoT Permit, so the applicant will have to address all of these issues with New Hampshire Fish and Game.

Val Shelton said the Board thought that the open space was the only way to have this land developed to protect the natural resources that that they would not have done under a conventional plan. She said if there is anything the Planning Board can do in relation to communications with the Conservation Commission to let them know.

Christian Smith said with regard to LRAC’s input their development team is compelled to notify them when proposing development within their corridors and they will indeed provide responses to their concerns and all other Alteration of Terrain Permit comments. He said Fish and Game is the entity/agency that is going to give AoT their marching orders with regard wildlife impacts, and they may also require some additional protections they feel are warranted based on the proposed development.

The Planning Board stated they have heard and understand the concerns raised by the LRAC. Yet, the Board does not elected to take a position on the request of the Lamprey River Advisory Committee’s request to deny the application. The Planning Board’s final subdivision approval of this application will be subject to a condition that the applicant secure the Alteration of Terrain (AOT) permit and meet all conditions that may be imposed by the NH DES and New Hampshire Fish and Game, as appropriate, therein to protect wildlife concerns.

**Action**

**Motion: Val Shelton made a motion to continue this application until December 22, 2020**

**Second: Eric Botterman**

**Vote: Scott Blackstone, Michal Zahorik, Eric Botterman, Val Shelton,**

**Sarah Finch, Jamie Bruton in favor, Bill Doucet abstained. The motion carries.**

**5. New/Old Business**

**Discuss of Amendment to the Impact Fee Ordinance to remove Water and Sewer impact fees and replace them with System Development Fees.**

Diane Hardy said she sent a memo to Town Attorney John Ratigan explaining the Planning Board’s interest in doing away with Water and Sewer Impact Fees and having the Town institute a System of Development Fees as an alternative which would provide greater flexibility to the Water and Sewer Department and give them more control over the process.

Diane Hardy said she and Val have discussed language to move this forward to the Town Council and found the Ordinance on Impact Fees was very general and does not stipulate what type of fees the Town should have. The Ordinance states that any proposal for change in impact fee assessment methodology or fee recommendation schedules shall be submitted to the Town Council for review and comment. A letter should probably be sent from the Planning Board Chairman to the Town Council with a recommendation for adopting System Development charges in lieu of Water and Sewer impact fees. The Planning Board would then have a public hearing to rescind water and sewer impact fees. Then, it would be in the hands of Town Administration and Water and Sewer Departments to come up with the new System of Development fees which would involve doing the analysis and cost estimating to provide a basis for it. When the system is in place it can simply be handled in the normally fashion that Water and Sewer Fees are adopted by the Town Council.

**Action**

**Motion: Val Shelton made a motion to formalize this to instruct the Chair of the Planning Board, in conjunction with the Town Planner, to draft letter from the Planning Board to the Newmarket Town Council with the recommendation the Town’s Water and Sewer Impact Fees be rescinded and replaced with Water and Sewer system development charges based on the Board’s investigations and position that the change in methodology will provide the Town with much more flexibility in dealing with the capital costs of the Water and Sewer system for those who seek to connect to the system. The process to implement this modified system is to be recommended by the Town Planner and the Town Counsel and will be incorporated into the letter to be signed by the Chair of the Planning Board.**

**Second: Bill Doucet**

**Roll Call Vote: Scott Blackstone, Michal Zahorik, Eric Botterman, Bill Doucet, Val Shelton, Sarah Finch, Jamie Bruton in favor.**

**Motion carries.**

Diane Hardy suggested the Board set up a Public Hearing in January then forward to the recommendation to the Town Council at that point. Toni Weinstein said their process is for a first and second reading and asked if the Planning Board would hold the Public Hearing prior to that. Val said the Board is required to hold a Public Hearing to modify the impact fee system. She said the Town does not want the Planning Board to zero out Water and Sewer impact fees prior to the Town Council adopting the System Development charges. Toni Weinstein said Steve Fournier will need to do some work on this before he can put this before the Council. Val Shelton thought January was a little aggressive and Diane Hardy said the Planning Board meeting is January 26, 2021. Val said the Board’s piece is to basically zero it out and we do not want to do that until there is something to replace it.

**6. Chairman’s Report** – None

**7. Planner's Report** – None

**8. Committee Reports** – None

**9. Adjourn**

**Action**

**Motion: Sarah Finch made a motion to adjourn at 8.23 pm.**

**Second: Scott Blackstone**

**Roll Call Vote: Val Shelton, Bill Doucet, Scott Blackstone, Michal Zahorik, Sarah Finch, Jamie Bruton, Eric Botterman in favor**