**NEWMARKET PLANNING BOARD MEETING**

**December 22, 2020**

**MINUTES**

The meeting was opened at 7:03 pm. The Chairman called a roll call vote for attendance.

**Present:** Eric Botterman (Chairman), Val Shelton, (Vice Chairman), Jane Ford, Michal Zaborik (Alternate), Ted Seely (Alternate) and Scott Black- stone, as the Town Council ex-officio representative. Town Planner, Diane Hardy, was present.

Absent: Jamie Bruton, Sarah Finch, and Bill Doucet were excused.

Following the Pledge of Allegiance and Public Comments (of which there were none), Eric Botterman 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 Jamie Bruton, and Alternate Ted Seely to sit in for Sarah Finch.

***Regular Business***

***77 Hersey Lane, LLC – Walter Cheney/Chinburg Builders, Inc. – Continuation of public hearing for an application for an 11-lot Open Space Residential Subdivision, with municipal water and sewer service on a twelve acre lot. The lot is located at 77 Hersey Lane, Tax Map R4, Lot 3, R2 Zone.***

Chairman Botterman indicated that he believed everyone should have a package of information and a memo from Town Planner, Diane Hardy, dated December 18, 2020. Diane Hardy gave a quick update regarding the two remaining issues from the last meeting. There had been a letter from the Town’s review engineer that had been submitted to the Town on December 8, indicating that most of the issues with the plans had been addressed with the exception of two. Those concerned the transition between the existing Hersey Lane and the proposed subdivision road and the second related to the easement plan which will be discussed tonight.

**Eric Botterman opened the public hearing at 7:12 p.m.**

There were no members of the public present at the Town Hall auditorium. There was one member of the public, Thomas Grilli, who was attending via Zoom, but did not wish to speak.

Christian Smith, the Applicant’s engineer, indicated they have provided a new road profile to show a better transition between the upgraded Class VI road, the existing Class VI road and the new subdivision road which is available for the Board to review. Diane Hardy reported that the review engineer was satisfied with the changes that had been made.

Christian Smith stated that their surveyor and legal counsel met regarding the easements and they have provided an updated Easement Plan to address some of the ambiguities that were raised by Underwood Engineers with the former plan. Paul Kerrigan, from Chinburg Builders, suggested that they hold off on recording the easement plan until after construction in case there are field changes during the construction which would require further revisions to the plan. It was agreed by all that was a reasonable request.

Given that the outstanding items have been addressed, Diane Hardy stated that we are in a good position this evening to conditionally approve the application and she has included in her memo several conditions of approval for the Planning Board to consider as they move forward.

**Eric Botterman closed the public hearing at 7:15 p.m.**

In referring to Diane Hardy’s memorandum, dated December 19, 2020, Eric Botterman asked if the Board had any questions or comments.

Val Shelton said she had a few items she wanted to discuss.

1. ***Findings of Fact***: Number 5 - Should we note the Board’s position on the Lamprey River Advisory Committee (LRAC) letter that was received?

2. ***Conditions:***

Number 2 - Do we want to add language that the Public Works Director sign off on the easement plan details pertaining to drainage structures?

Number 10 - Should the Planning Board set up some parameters for what is “active and substantial development or building” for temporary vesting purposes, and “substantial completion” for permanent vesting after the initial five (5) year period is up?

Number 15 - Should we have specifications on locating the “no-cut, no disturb” markers on the wetland buffers?

The Board agreed that: the Public Works Director should sign off on the easements related the drainage structures; language should be added that the Board took no position related to the LRAC’s suggestion that the plan be denied; the spacing between the markers denoting the “no cut” zones should be consistent with 50 feet spacing for posting the property. For vesting, it was agreed that temporary vesting occurs when infrastructure and roadwork (with the exception of final paving) is completed. And, permanent vesting occurs at 75% build-out for vesting after five years.

Eric Botterman also noted a couple of items under Conditions:

Number 7 – There is a typo regarding the classification of the “upgraded portion of Hersey Lane”, it should be Class VI, not Class IV.

Number 6 – Should the Town Engineer be approving the amount of the escrow payment for construction inspection services? All agreed that it should be the Town, not the Town engineering consultant.

Regarding Condition 10 - Vesting, Jane Ford asked if there are any elements of this time frame and contractual obligations where there may be delays due to circumstances beyond the contractor’s ability to control and which would free both parties from liability under the principal of “force majeure”. It was explained that the purpose of vesting is protect the applicant from changes in zoning and subdivision changes and not necessarily to assure completion or performance within a specific time frame. Val Shelton explained that we should have some kind of threshold when permanent vesting would occur and she suggested that should occur at 75% completion, which was agreeable to all. Ted Seely asked what the time frame for completion would be. The applicant’s representative indicated that he expected that all the homes would be built within five (5) years.

**Action:**

**Motion: Val Shelton made a motion that the Planning Board approve the residential open space development in accordance with the Findings of Fact and Conditions as set forth in the memo from Diane Hardy, dated December 19, 2020 below and with the modifications as made by the Planning Board above**

At this time, the Technical Review Committee (TRC) and Town Planner is recommending the approval the application subject to the following findings of fact and conditions as set forth below:

**Findings of Facts**

1. On January 14, 2019, the Newmarket Zoning Board of Adjustment granted two (2) variances to 77 Hersey Lane LLC (Walter Cheney/Chinburg Builders, Inc.) to permit duplex residential use in this open space development and to allow a 30 foot separation for proposed duplexes in the R-2 Zone at this location.

2. The Planning Board approved a Special Use Permit requested by Walter Cheney/Chinburg Builders, Inc. for a Residential Open Space Design Development pursuant to authority granted under Section VI of the Newmarket Zoning Ordinance for property located at 77 Hersey Lane -Tax Map R4, Lot 2 in the R-2 Zone to permit the construction of 11 units, subject to several conditions and final approval of the proposed subdivision by the Newmarket Planning Board, on November 12, 2019.

3. Planning Board hired Mark West, an environmental consultant and certified wetlands scientist, to assist the Planning Board in the review of waivers to 100 foot wetland buffer requirements. Following a comprehensive review and consideration of Mr. West recommendations, a re-design of the concept to minimize wetland impacts, and negotiations with the Technical Review Committee, the waiver to the 100 foot wetland buffer requirements was approved at the September 14, 2020 Planning Board.

4. Following the review of several iterations of plans, the final plans were provided to the Planning Board office on December 3, 2020 for final review by the Town’s engineering consultant, Underwood Engineering. These plans were presented to the Planning Board for review at its meeting on Tuesday, December 8. At this meeting, the Town’s engineering consultant provided a letter, dated December 8, 2020 indicating all items had been resolved with the exception of two remaining issues:

(A) Items 4 and 5 regarding Easement Plan which will be addressed by a condition of approval that the plan be modified and approved by Town Planner and Town’s legal counsel prior to plan signed and recording, as a condition of approval, as stated below.

(B) Item 14 regarding transition between existing Class VI road, the upgraded portion of the Hersey Lane Class VI, and the new proposed road to the open space development. The applicant has submitted a revised road profile which has been reviewed and approved by the Town’s engineer and has signed off on this item.

5. The Planning Board reviewed recommendations of the Lamprey River Local Rivers Advisory Committee (LRAC) as presented in its letter, dated November 18, 2020, to the New Hampshire Department of Environmental Services (NH DES) relative to the developer’s Alteration of Terrain (AOT) application. The Planning Board heard testimony from the Developer’s, Certified Soil Scientist, Luke D. Hurley at their meeting on December 8, 2020. The developer’s wetlands specialist will be forwarding review comments to the NH Department of Environmental Services (NH DES) for their consideration in response to the letter. The Planning Board elected not take a position on the request of the Lamprey Rivers Advisory Committee to deny the application. Approval of the Alteration of Terrain (AOT) permit by the NH DES is stated below as a proposed condition of approval below.

6. At its meeting on December 8, 2020, the Planning Board granted the following waivers to the Subdivision Regulations as listed below:

* Section 3.02 (B) (4) – to allow an 11 foot wide road width
* Section 3.02 (B) (5) – to allow an alternative geometric road design for proposed cul-de-sac including super elevated grades
* Section 3.02 (D) (5) – to allow 2:1 grades and guardrail in vicinity of cul-de-sac to reduce down slope impacts
* Section 4.08 – to allow a plan scale of 1”=50’ whereas 1’=100’ is required.

7. The Technical Review Committee (TRC) has met three times, once in person and twice virtually (through Zoom due to the panademic) since January 2020 to review and work through the technical issues associated with this application.

**Recommendation and Conditions of Approval**

It is recommended that this application be approved subject to following conditions:

1. All state, local and federal permits shall be provided prior to plan signing, including the NH DES Alteration of Terrain (AOT) and Sewer Discharge Permit, and the EPA Notice of Intent and SWPPP (Stormwater Pollution Prevention Plan).

2. All easement documents, covenants, and deed restrictions pertaining to open space, drainage structures, and best management practices, including an updated Easement Plan, shall be reviewed and approved by the Town Planner, Public Works Director, and the Town’s legal counsel. All legal documents related to the Open Space Development, including Articles of Incorporation, Homeowners Association By-Laws, Stormwater Maintenance Agreement, shall be reviewed and approved by the Town’s Legal Counsel prior to plan signing and recording of the final plan and legal documents.

3. A Land Stewardship plan, in narrative form, shall be professionally prepared which focuses on the long-term management of the open space as conservation land and addresses items such as measures for correcting potentially destructive measures, such as erosion, a maintenance and operations plan needed to maintain the stability of the resources, the management of woodlands and buffer area landscaping, the preservation of wildlife values, the enhancement of scenic views and the protection of significant mature trees on site.

4. The Developer shall enter into a Developer’s Agreement with the Town of Newmarket which includes findings of fact, special conditions, the Town’s expectations prior to, during and after construction, and prior to the issuance of Building Permits, certificates of occupancy, and the requirements for a performance bond;

5. The Developer shall issue a performance bond and/or performance guarantee in the an amount and form deemed acceptable by the Town’s engineering consultant and legal counsel to ensure upgrading of the Class VI portion of Hersey Lane, the proposed new roadway and stormwater systems, and all other infrastructure improvements in accordance with the final approved plans.

6. The Developer shall make advance escrow payment to the Town in an amount determined as being acceptable by the Town for construction inspections services to assure proper site construction of roadway, utilities and stormwater systems.

7. The Applicant shall seek and obtain approval from the Newmarket Town Council to upgrade a portion of the Class VI highway of Hersey Lane and reclassify it to a Class V classification in accordance with the approved plans, RSA 674:41 and other applicable statutes so as to provide suitable access and legal frontage for the proposed open space residential development.

8. The Applicant shall clearly label the subdivision plan to be recorded at the Rockingham County Register of Deeds as an Open Space Subdivision Plan for 77 Hersey Lane LLC, and identify the 9.16 acres tract (shown as Tax Map R4, Lot 3) “Proposed Open Space” as Open Space- Conservation Land pursuant to Sec 32-193 Definitions (B) of the Newmarket Zoning Ordinance.

9. Should any site construction occur within the public way of Hersey Lane or Durell Drive so as to interfere with local traffic, the contractor is required to coordinate with the Newmarket Police Department to ensure the flow of traffic is not disrupted or needlessly restricted.

10. Vesting – The Special Use Permit and Subdivision Approval for this Residential Open Space Development shall be deemed to have lapsed twenty four (24) months after the date of the grant of final approval, exclusive of the time required to pursue or await determination of any appeals, unless active and substantial development or building has commenced within said period, as provided by RSA 674:39 and has not been subsequently abandoned and discontinued thereafter.

a. This Special Use Permit and Subdivision Approval shall be deemed to have temporary vesting rights, exempting it from all subsequent changes in subdivision regulations, impact fee ordinances and zoning regulations, except those regulations that expressly protect public health standards, for a period of five years after the date of final approval of the plans, provided active and substantial development of the improvements as shown on the approved site plan occurs within 24 months after the date of the final approval; provided the plan is properly recorded in the Rockingham County Registry of Deeds and at the time of approval and recording, the open space subdivision plan conforms with the regulations that are in effect, and that any performance security that is required by Section 2.5 (3) of this Agreement has been posted with the Town. Temporary vesting shall occur upon completion of the road and infrastructure, with the exception of the final coat of paving.

b. Pursuant to RSA 674:39 II., once substantial completion of the improvements as shown on the residential open space subdivision plan has occurred in compliance with the approved Special Use Permit and Subdivision plan, the rights of the owner or owner’s successor in interest shall permanently vest at the point of 75% complete build-out of the 11 units and no subsequent changes in subdivision plan regulations or zoning ordinances, except impact fees adopted pursuant to RSA 674:21 and 675:2-4, shall operate to affect such improvements.

11. The Applicant shall pay impact fees in accordance with the current Town of Newmarket Impact fee schedule for Schools, Recreation, Water and Wastewater in the following amounts for the 11 units (9 single family units and 1 duplex):

**Schools Recreation Wastewater Water**

**Single:** Fee/Unit $ 3,418 $ 276 $ 1,226 $ 737

9 units *$*30,762 $ 2,484 $ 11,034 $ 6,633

***Duplex***: Fee/Unit $ 2,963 $ 353 $ 905 $ 544

2 units *$ 5,926 $ 706 $ 1,810 $ 1,088*

**Total $ 36,688 $ 3,192 $12,844 $ 7,710**

The total amount due for impact fees is **$ 60,434.**

12. Street name and numbering shall be assigned by the Town’s 911 Coordinator prior to the issuance of the building permits for dwelling units within the development.

13. Tax Map and Lot numbers for the individual lots within the subdivision plan shall be reviewed and approved by Town’s Assessor’s office prior to plan signing and recording.

14. The Applicant’s engineer shall provide data input to the PTAPP Database, prior to plan signing, subject to the review and approval of Underwood Engineers.

15. Permanent markers, such as tags, granite posts and/or carsonite markers, shall be installed to delineate the boundaries of the “no cut/no disturbance” buffer zone of the wetlands on the approved open space development site plan and the attached. The markers shall be located at least fifty (50) feet apart.

**Second: Jane Ford**

**Vote: All in Favor (Chairman did a roll call vote)**

***Planner’s Report***

Diane Hardy reported that the Town Council held a public hearing and second reading at their meeting on December 16, 2020 regarding the proposed zoning amendments related to Floodplain Management that had been recommended and forwarded by the Planning Board at the December 8, 2020 Planning Board meeting. The zoning changes were adopted unanimously and will be certified and forwarded to the NH Office of Strategic Initiatives. The new maps will go into effect on January 29, 2021.

Diane Hardy reported that she has drafted a letter on behalf of the Planning Board to be forwarded to the Town Council regarding the rescinding of impact fees for water and sewer utilities and recommending that they be replaced with system development charges. In reviewing this with Legal Counsel it was discovered there are a few references in the Zoning Ordinance to water and sewer impact fees that need to be removed. So, the Planning Board will need to have a public hearing on that and recommend those changes to the Town Council for adoption.

***Adjourn***

***Action***

***Motion: Ted Seely made a motion to adjourn at 7:32 p.m.***

***Second: Scott Blackstone***

***Vote: All in favor***

The meeting adjourned at 7:32 p.m. following a roll call vote.