

PLANNING BOARD MEETING MINUTES  
NOVEMBER 15, 2023, 7:00 PM AT DUNBARTON TOWN OFFICES

The chair called the meeting to order at 7:00 p.m.

### **Roll Call Attendance**

Ron Slocum, Ex-Officio Justin Nault, Vice-Chair George Holt, Chair Chuck Frost, Ken Swayze, and Jeff Crosby

### **Business**

The chair confirmed with the administrator, in the absence of the secretary, that this meeting was posted in two places and on the Town's website.

1. **Approval of Minutes:** **Ken Swayze moved to approve the minutes of the October 18, 2023 regular meeting; George Holt seconded the motion.** Chuck Frost said he would like a correction made to what he said in the Land Development Regulations section on page 5. It reads: *He said he learned from Ken and George that a lot of input went into the current regulations that were updated in 2010, and there is not a lot that needs to be changed.* Chuck said it should read: *He said he learned from Ken and George that a lot of input went into the current regulations that were updated in 2010, and a lot of things were done and changed at that time.* Donna said she had a request from Bob Pike, Grapevine, LLC, to amend what he said during the discussion on his subdivision project. Page 3, Conservation Commission abutter section: *I have instructed my loggers not to cut in the wetlands. We are allowed to pull stumps and place wells in the buffer. However, no structures. We are to provide erosion control measures such as those on the plan to prevent sediment and erosion going into the wetlands once we begin excavation for homes. Typically we cut in the wetlands but do not pull stumps. Here we will not cut in the wetlands.* Jeff Crosby asked if Donna had listened to the recording of the meeting; she said she had not. She read what she had written in the meeting minutes: *Mr. Pike said he has instructed his logger not to cut in the wetlands. He said they can cut in the buffer but cannot pull stumps.* Jeff said it seemed similar enough, he was okay with the amendment. There were no other comments. Ken and George were in agreement with the amendment to the motion. **Ken Swayze moved to approve the minutes of the October 18, 2023 regular meeting, as amended; George Holt seconded the motion.** There was no further discussion. **The majority were in favor; Justin Nault abstained as he was not at that meeting. Ken Swayze made a motion to approve the minutes of the November 1, 2023 sub-committee workshop; Chuck Frost seconded the motion. George Holt, Ken Swayze, and Chuck Frost approved the minutes; others abstained as they were not in attendance.**
2. **Correspondence** – Donna presented an abutter notice from the Bow ZBA. The subject parcel abuts a Conservation parcel in Dunbarton. The applicant is requesting a variance for reduced frontages and a driveway less than 15' from the side property boundary. There is a site walk on

November 18<sup>th</sup>; the public hearing is scheduled for November 21, 2023. George asked that a copy of the notice and plan be sent to Brett St. Clair for the Conservation Commission.

3. Selectmen's Report – Selectman Nault reported about a site walk done on Kelsea Road earlier today. He said he and Selectman Kaminski attended, as did the road agent, and two abutters. The purpose of the site visit was to observe the area recently marked out by Mike Guiney's surveyor for the layout of land to be used as part of the planned turn-around. There will be a public hearing at the Selectmen's meeting of November 16<sup>th</sup> where the Board will accept this piece for use in the cul-de-sac. This action is separate from Mr. Guiney's subdivision approval. He will be responsible for the payment of the exaction fees set by the Planning Board as part of his approval, less the credit given for this piece for the layout. In addition to the payment of the balance of the exaction fees, approximately \$37,000, monuments for the subdivision will need to be in place before the subdivision plan is finalized and recorded. It was mentioned that the petition to layout this section of road will be recorded. Donna said she would recommend that the recorded document information be included on the final subdivision plan.
4. Building, Planning & Zoning Department Report – Donna said things have been fairly steady in the office. They are working with the State electrical inspector on a DIY solar installation where there were several deficiencies, thus not being approved by the building inspector. The resident has asked to meet with the Selectmen at their next meeting. Selectman Nault was not aware of the request or purpose of the meeting.

**Conceptual Consultation** – 160 Mansion Road, Stephen and Heather Lewis. The chair asked Donna to give an overview of the situation, reminding everyone that this would be a non-binding discussion. Donna introduced the owners and explained that their property is for sale. She had a call from a prospective buyer, and during that call he asked about an easement that he could see on an abutting lot when viewing the online maps. In researching the easement, Donna discovered a restriction of no further subdivision on the recorded subdivision plan that created the subject lot. Additional research of minutes from the 1987 approval showed that the applicants had voluntarily put the restriction on the project; minutes from 1989 showed the same applicants and their attorney requesting that the restriction be removed. The Planning Board said the restriction could not be removed by any means other than to reapply for a subdivision. Donna spoke with board members at a recent workshop; they both thought the Planning Board was not in the position to overturn a previous board's decision. Donna spoke with another board member the next day; he felt the restriction could be addressed through RSA 646:4-a. Because of the conflicting statements and opinions, Donna sent an inquiry to the legal department of NHMA for their opinion. Their response was: *The proper procedure here would be for the individual to apply to the PB for a modification of that prior approval to have that restriction removed. I do not think that revoking the approval under RSA 646:4-a is applicable here.* When talking with town counsel on another matter, Donna asked about this restriction. Attorney Tanguay stated that it was his opinion that the PB did not have the authority to put the restriction on the subdivision approval and that the lot could be subdivided. He said the new plan would/should stand on its own merits and, if it meets all of today's subdivision regulations, he sees no reason it could not be done. He agreed that the prospective buyer should seek their own legal counsel. Donna said Mrs. Lewis was at the office recently, and they spoke about the matter. Mrs. Lewis said they were not aware of the restriction when they purchased the property and had considered subdividing a lot off for her parents. Donna said she contacted Attorney

Tanguay for a written opinion; that has been provided to the board members. In his response, the attorney mentioned that boards “are only authorized to issue decisions on site plan/subdivision applications that are consistent with the provisions contained within the Board’s rules/regulations, the Town’s Zoning Ordinance and N H law”. He said, “the Board, back in 1987, only had the requisite legal authority to impose a condition restricting further subdivision of this land if the Town’s Subdivision Regulations specifically allowed for that kind of condition”. Donna said she looked through subdivision regulations from that timeframe and did not find anything referencing such conditions.

Mr. Lewis said they were present tonight to speak for the prospective owners who are out of state and unable to attend. He said they want to do their due diligence, as with any transaction, and are seeking any assistance and information they can get. Mr. Lewis said the buyers’ plan would be to subdivide a lot of for their son and his family. Donna distributed copies of the buyers’ proposal for the layout of the new lot, which would be five acres and 300’ of frontage as required in that district. Board members discussed the request, the attorney’s response, and what might have been the purpose of the restriction in the first place. Meeting minutes are minimal and do not include why the applicants agreed to, or offered, the restriction.

George Holt spoke about his concerns of overturning the restriction, citing examples of conservation and preservation matters. Some members said they thought it would be best to go with the opinion of town counsel, noting that the parcel has sufficient acreage and frontage. Jeff Crosby mentioned that the property is on a state road where there could be a restriction on the number of driveways, but that could be addressed with the state. It was the general consensus that the buyers should seek legal counsel and gather information, noting that they would have the right to apply for a subdivision.

**Old Business** - None

**New Business** - None

**Other Business**

**Land Development Regulations** – The subcommittee met on November 1<sup>st</sup> with Ken, Chuck, and Jonathan in attendance. Donna was asked to attend to discuss the list of items she submitted for their consideration, based on deficiencies noted by surveyors, engineers, and attorneys.

(Jonathan Lefebvre arrived at this point in the meeting.)

Chuck said Donna was to work on driveway regulations. Donna explained the research she has done into other towns’ regulations. She said it was discussed at the subcommittee meeting if the regulations should be in the Zoning Ordinance, in the subdivision regulations, or a separate ordinance/document. Donna has chosen a few specific points to include, and Jeff has some notes of what he thinks should be addressed. Donna said she would like to have the goal decided before going much further with the draft. Jeff said some of the other towns’ regulations are very technical, and he does not want anything too difficult. He said the grade is a big concern and mentioned that driveways along a property line could be addressed as they can create social issues. Jeff said Jon Wiggin would have a lot of input on driveway width. He said the regulations should not be too restrictive, but it would be nice to have a little more to go on. He spoke about enforcement and the need for plans or engineer review if the regulations are too

technical. Jonathan said all the points made are what was discussed at the subcommittee meeting. He said it comes down to what the board would like to see, citing some examples: grade, length/turn around requirements, safety, width/by-pass requirements, and if there seems to be a hurdle, a plan could be required. Donna gave an overview of points to consider: driveway in the setback, width at the street, intersect with street, width and length, grade, culverts, sight distance, distance from intersection, common driveways, owner's responsibility, and NFPA requirements. She said she will continue with direction on how detailed the board wants the regulations to be. George said he felt 15% should be the maximum grade for driveways; others agreed. He said that seems reasonable for most situations. It was suggested that Donna create something for the board's review, keeping it simple. Jonathan said he could pull some details from other towns and can assist with AutoCAD.

Jonathan spoke about defining minor and major subdivisions. He said he has pulled together a couple of checklists and needs the town's checklist for comparison. Donna will send the current checklist to him.

Donna said another item that was discussed at the subcommittee meeting was Section IX, M – Authorization for Road Construction application. She said it was brought to her attention when a developer asked for the application, and she could not find any such document in the office. There was discussion about removing that requirement, creating an application, or requiring a pre-construction meeting. Chuck said he thought the consensus was to remove it from the regulations. Donna read the section. Chuck said it sounds like a pre-construction meeting should be added. Jonathan said the article could be changed to say that. This will be addressed at a future subcommittee meeting.

Zoning Amendments – An update of the Floodplain Development Ordinance, Article 10 in the Dunbarton Zoning Ordinance, will be done through an amendment. The group reviewed the document, as reviewed by the Office of Planning and Development, which showed text to be deleted, as well as text to be revised or added. Donna explained that this update is required to bring the ordinance to current language and references. She inquired about the timing of the amendment since the new FEMA flood maps will not be adopted until 2024 or 2025. OPD said the update needs to be done now; there is a provision for the towns to amend the date of map adoption without having to go back to the voters. Donna recommended that the board members review the draft for accuracy in preparation for the December meeting where the amendment would be finalized and moved to the ballot for March. There was discussion on the purpose of the flood insurance program, if there are any areas in town that are required to have flood insurance, and the flood hazard areas on the current map, with a few more to be added with the map update.

#### Bond Reductions –

Countryside Estates, R S Audley, Inc. – A request for the release of the balance of the outstanding bond was received from Ryan Audley on October 3, 2023. The board is in receipt of reports of final inspections done by Alex Cote and submitted by Jim Donison of Northeast Engineering. Donna also distributed a list of outstanding items from those inspections. She went over each item, updating the board with the status of each. She read a statement from Bob Pike, owner of the project, stating that he will work with DES in the event there are future concerns with the box culvert on Hilltop Lane. She also read a statement from Jacques Belanger, certifying that all bounds for the project have been set. An

as-built plan has been reviewed and approved by Jim Donison. After his review of the as-built plans, Jeff Crosby spoke about some concerns with elevations of the road and setting of culverts at the driveways. He said the culverts were not set deep enough so there was not sufficient cover over them. He said he mentioned this to Mr. Pike early on in the project. Recently, a couple of builders have taken up culverts because they were damaged; those have been reset at the proper elevations. There are a couple more that will need to be reset for the same reason. Jeff spoke about the quality of work, his expectations based on the experience of the contractor, and his frustrations of having details outlined in the subdivision regulations yet they aren't always followed. Jonathan asked if Jeff was comfortable with the request or if something should be held back or a condition be placed on the decision. Jeff said overall the project was done well, and he really could not say that any of the issues would ever be of concern in the future. **Justin Nault made a motion to release the remaining \$275,000 of the performance bond in the name of R S Audley for Countryside Estates. George Holt seconded the motion.** Jeff Crosby asked if all of the engineering fees have been paid. Donna said all invoices have been paid. **All were in favor.** The Selectmen will be notified of the decision.

Zachary Drive, Advance Siteworks, LLC – A request for the release of the balance of the performance bond for the extension of Zachary Drive was received from Josh and Brielle Chapman. The board is in receipt of the final inspection report submitted by Mike Vignale of KV Partners, LLC. Mr. Vignale noted in his inspection of October 18th that the turf on the detention basin at the end of the cul-de-sac was damaged by construction vehicles traveling between lots. The memo said some minor regrading and seeding will be required at some point. Jeff Crosby said there were some tracks/scuffing from where a logger had gone onto the lots at the end of the cul-de-sac. He said the owner of those lots had put down some seed and hay in response to being advised of the damage. Jeff was asked if this is town drainage in the right-of-way and if it would be a problem in the future. He said it is in the ROW, and he could not say if it would be an issue later on. Jeff said this project was very well done, it was built to all standards, and he is satisfied with the final product. An as-built plan has been reviewed and approved by Mr. Vignale. Donna read a statement from Jacques Belanger, certifying that all bounds for the project have been set. **Justin Nault made a motion to release the remaining \$44,100 of the performance bond in the name of Advance Siteworks, LLC for the extension of Zachary Drive. George Holt seconded the motion.** There was no further discussion. **All were in favor.** The Selectmen will be notified of the decision.

**Justin Nault moved to adjourn the meeting at 8:35 p.m.; seconded by Ken Swayze. All were in favor.**

Respectfully submitted,

Donna White