

Town of Milton
424 White Mtn Highway
Milton NH, 03851



Planning Board
PO Box 310
(p)603-652-4501
(f)603-652-4120

February 1, 2022
Meeting Minutes
6:30 PM

Present Members: Ryan Thibeault, Vice-Chair, Anthony Gagnon, Paul Steer, Matthew Morrill, Joseph Michaud, Larry Brown, Robert Graham
Vice-Chair Thibeault named L. Brown in for J. Nute; named B. Graham in for B. Boyers

Absent Members: Brian Boyers, Chair, Jonathan Nute

Staff Present: Bruce Woodruff, Town Planner; Suzanne Purdy, Land Use Clerk

- I. Call to Order:** Vice-Chair Thibeault called the meeting to order at 6:35 PM.
- II. Public Comment:** There were no speakers for the public comment item of the agenda.
- III.** R. Thibeault stated this meeting is a Continuation of Public Hearing - for an Open Space Subdivision & Condominium Site Plan for Three Pond Investments, LLC, owner, Walter Cheney, Applicant located at Map 23, Lots 44 & 40 on Northeast Pond Rd. 49 total acres in the Low-Density Residential zoning district.

R. Thibeault opened the meeting up to the applicant Walter Cheney, and his Engineer Paul Blanc.

W. Cheney gave an overview of the history of the project and noted that he and Norway Plains have two scenarios to present to the board tonight. After going back and forth with the board over the years regarding which distance of buffer zone they will accept, they are back at the 100' requirement.

P. Blanc presented sheet C-2, a site plan which shows the 6 buildings moved back from the south easterly property line to achieve the required 100' buffer. The buildings have also been shrunk in this scenario. They did not complete the full engineering on this plan, the grading plan, cross sections, etc. They wanted to know which scenario the board liked better.

The other plan, C-1, they were able to move two of the buildings much further back. All 6 buildings still adhere to the 100' buffer. The building heights, on average, are higher than the 35'. This plan would include building a retaining wall on the sides of the buildings and mound up the soil between the wall and the building to achieve the 35' max height requirement. On this plan the septic system would remain in the same location, but a pre-

treatment system would need to be added. This scenario still adheres to the open space requirements. W. Cheney spoke about the building heights, they are at 38' on these plans. R. Thibeault stated the Planning Board voted at a previous meeting to not allow the building heights to exceed 35'. That cannot be changed. He stated there were four requirements the board had asked the Cheney team to do for this meeting:

1. Adhere to the 100' buffer zone: this has been accomplished.
2. Depict screened dumpsters at each condo building: this has not been done
3. Show that the building heights meet the zoning ordinance of max. 35': this has not been done.
4. Show the landscaping plan in much more detail than has been submitted: this has not been done.

J. Michaud asked how they calculated their building heights; is it an average of all six buildings? P. Blanc replied they take an average of the four sides of each building and divide by four.

P. Blanc noted that they will do all of these things the board has asked for in the next submission such as a new lighting plan, topography plan, fences / walls around the dumpsters, drainage calcs, a new AoT plan, they just want to know which conceptual plan the board prefers.

L. Brown stated he doesn't think building a retaining wall 10 feet out from a building, filling it with soil and fabricating a new ground level meshes well with the spirit of the ordinance.

P. Steer asked if they could achieve moving two of the buildings back, can they move all six of them? P. Blanc replied there are wetlands and numerous vernal pools that would be disturbed. They had discussions with the Army Corp of Engineers and with the NH DES resulting in the AoT for this project. The locations of the buildings are in the best places possible on the site. J. Michaud the less impact for wetlands looks like more impact to the residents.

R. Thibeault opened the meeting up for public comment and encouraged quality over quantity.

Rick Fernald stated the relocated buildings (on plan C-1) are right behind his house. He also read his letter, which is an attachment to these minutes.

James Hill asked if there is an impact on the residents for not following the Master Plan, who will be responsible for the loss of property value from the effects of this if it goes badly? He also agrees with Rick.

Ron Risan lives on Bolan Rd, stated that it is a private road, and the residents have to maintain it, not the town. He stated that Mr. Cheney owns other properties in this area, and if these new residents are given water rights, they'll be using our road and not be contributing to its upkeep.

Dan Bisson said one of his biggest concerns, after the fire of 2006 resulted in additional runoff from the hill; the Conservation Committee asked for a study because of the fire. He would like to see an impact study for the surrounding areas to indicate what will happen after this area is developed.

Paul Flathers asked if it is a foregone conclusion that there will be a development there? He is concerned about the increased traffic on NE Pond Rd, and the quality of life for the residents.

Tracy Tankevich noted that the developer did not meet most of the Planning Board's requirements from their December 7th meeting in these two submissions tonight. She is hopeful we can find a happy medium and doesn't negatively impact us the way it is set up.

Keith Downs property is one of 5 lots from a 40 +/- subdivision, a great plan would be to do that here to maintain the environment.

Cathy Stanley spoke about the watershed with all the mud and other runoff. She asked the board if they all walked the property. She is concerned about big ugly buildings being built there.

Ron Risman came back up and asked if the PB has issued a waiver to the developer to build a High-Density project in a Low-Density Residential zone? Does that become invalid due to all of these changes. R. Thibeault directed the question to Planner Woodruff. Planner Woodruff stated if a property owner has the right size piece of property even in the LDR zone, they follow the rules that are in the Zoning Ordinance in article 6 which is the open space development article, if they follow those rules, they can have a development like this. That article states very clearly, unlike any other zoning rules, that the PB has the authority to waive anything, and that the article 6 supersedes the regulations in the LDR zone that is underneath it. That's the case here. I need to answer another question, some people say that this development doesn't follow the Master Plan. That couldn't be further from the truth. The Master Plan is made up of several chapters, not just the natural resources chapter. It's made up of the Land Use and Economic Development chapter, the housing chapter, transportation, community facilities, and natural resources. You can't cherry pick. The master plan is the foundation for writing the zoning ordinance because if you don't have a master plan, you can't have a zoning ordinance. You can't have subdivision and site plan regulations. Once you have the Master Plan, those ordinances and regulations have to have the underpinning of all parts of the Master Plan. So, an open space development is not against the master plan if the application follows the rules that are in there. In it's application before us today, does not follow all of the rules that are in there. The applicant has not prepared what you told them to do on December 7th: make the changes, come back with the revised plans. They didn't do it. Where does that leave you today? Please read my Planners Memo if you get a chance.

Tony McDonough from Sewell Shores Rd, Lebanon, ME said three years ago he built a new house directly across NE Pond from this proposed development. This will ruin the whole sight line of the lake. He thinks it's a travesty that this board is even considering putting this monstrosity in this location. Further, this project has never had a true set of plans that show a true depiction of what is actually going to be there. He said in order to have a view from these proposed buildings, the developer would need to clear cut the entire hill since the trees are 30-40 feet tall. And the light pollution that it is going to create will ruin it for the rest of us.

R. Thibeault thanked everyone for their professionalism and really appreciates the cooperation of all. He said, at this juncture, the board has two options:

1. Deny the application based on the foregoing reasons that the applicant did not revise the plan required by the planning board and did not submit all revised plan sheets necessary by the required revisions. If this is the route the board takes, the applicant has the right to begin the process again with a complete correct set of submissions if they so choose.
2. Continue the Public Hearing; give the applicant more time to make these submissions to be presented to the board at a future date. It is not recommended at this time for the simple reason that this process has gone on too long already and given the unwillingness of the applicant to meet the board's requirements and to adhere to the zoning ordinance. He reiterated the four key points that the applicant failed to meet.

P. Steer asked if this goes forward that the applicant also submit a rendering of what the buildings are actually proposed to look like. R. Thibeault added no building plans have been submitted.

B. Graham said P. Blanc explained why they didn't submit all of the drawings.

B. Graham made a motion to give the applicant more time to prepare the renderings and additional plans. M. Morrill Seconded. Discussion: L. Brown stated that based on the outline there was still a reciprocal picture of the discussion from the developer as a continuation of the hearing prior to the Planning Board's deliberation for a motion, and this motion is actually premature. R. Thibeault noted the motion is on the table, and he has no way of stopping it. L. Brown asked if the board is then in discussion on the merits of that motion. R. Thibeault replied yes. L. Brown : if the project were instead denied and the applicant re-applied, he believes it would be more a signal to the developer that we wanted what we wanted, and he's concerned that this is one more kick-the-can down the road. R. Thibeault stated that he agreed with what L. Brown said. A. Gagnon also agreed with Larry; the board has given the applicant many opportunities, and the largest sticking point is the building heights, we specifically said 35 feet maximum, and they've come back with an *average* building height of 38 feet. He can't go with that. **R. Thibeault**

noted that the motion on the table is to continue this public hearing right now. Planning Board members voting Yes: B. Graham, M. Morrill; Planning Board Members voting no: P. Steer, J. Michaud, R. Thibeault, A. Gagnon, L. Brown. The motion failed.

R. Thibeault opened the floor back up to the developer to respond to any public or Planning Board comments. W. Cheney asked what the next step is, are we still in front of the planning Board? R. Thibeault explained that he called W. Cheney (the applicant) back up to speak as promised, since a motion was made before he was able to call the applicant back up for final comments.

Planner Woodruff summed up the procedural path: Your next step as a board, seeing as you voted not to continue the public hearing by giving the applicant more time to do more revisions, or do what the board needs to have done, and has moved to do that and meet the ordinance, which has not been found. You only have one more thing to do right now, and that is to make a motion to deny this application. It's only fair for the applicant and it's only fair for the abutters. The bottom line is, the applicant can go back to the drawing board, and do all the things they have been asked to do because of the ordinance, and then resubmit. If the applicant does come back in with a new application that's done right, the first step would be design review. That way the applicant can find out exactly what you want. That would be the time to present different concepts. As long as it fits within the requirements that are in Article 6, and other parts of the zoning ordinance, and the site plan regulations.

R. Thibeault sent the floor back to W. Cheney, who expressed the average height of the buildings has been 35 feet. They have not done anything different with that; they asked for a waiver of the 35 feet, we didn't get the waiver, so it's done. He said it's Milton's building code, the 35 feet.

R. Thibeault brought it back to the board to make a motion.

P. Steer made a motion to deny the plan as presented tonight. J. Michaud seconded the motion. L. Brown noted the motion should include the points raised by the Town Planner so that it is a fact-based termination of the board. P. Steer: so moved.

L. Brown stated the motion to deny was made the plans did not show that the building heights do not exceed 35 feet as per definition in the Zoning Ordinance; that the plans do not depict screened dumpsters at each condo building; additionally, the specifics of plantings and landscaping have not been detailed as noted by the Town Planner. R. Thibeault added that the applicant did not revise the plans as required by the board and did not submit all revised plan sheets necessary by required revisions.

R. Thibeault so we are voting to deny the application, so if you vote yes, you are voting to deny the application. **B. Graham** voted no. All others voted yes. Motion passes; application is denied.

IV. Review/Approval of Minutes: M. Morrill made a motion to approve the 1.17.22 meeting minutes; seconded by Anthony Gagnon. All in favor. Motion Passed.

V. J. Michaud made a motion to approve the 1.4.22 meeting minutes; seconded by M. Morrill. All in favor. Motion Passed.

VI. New Business: None

VII. Adjournment:

***A. Gagnon motions to adjourn, Seconded by J. Michaud. The vote is approved unanimously. The Motion Passes adjourning the meeting at 7:39 PM. ***