

**DURHAM PLANNING BOARD**  
**WEDNESDAY, SEPTEMBER 24, 2003**  
**TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL**  
**7:00 P.M.**

**MEMBERS PRESENT:** David Watt, Chair; Stephen Roberts, Vice Chair;; Kevin Webb; Nick Isaak, Amanda Merrill; Richard Ozenich, Arthur Grant, Annmarie Harris

**MEMBERS ABSENT:** Neil Wylie, Rachel Rouillard

**OTHERS PRESENT:** Jim Campbell, Planner, members of the public

**I. Call to Order**

The meeting was called to order at 7:00 PM.

**II. Approval of Agenda**

Chair Watt noted Kevin Webb would be voting in place of Rachel Rouillard.

*Amanda Merrill MOVED to approve the agenda. The motion was SECONDED by Stephen Roberts, and PASSED unanimously.*

**III Report of Planner**

- Jim Campbell noted there were copies of the Working Draft Proposal of the Capital Improvement Plan for Board members. He said there would be discussions on this at the next two Planning Board meetings, and said Todd Selig and Paul Beaudoin would be present to answer any questions.
- He said he had attended the Northeastern Economic Developers Association annual Conference, where he made contacts and got good information which should help in finding the right economic development for Durham.
- He noted he would be attending the Northern New England Chapter of American Planning Association Conference, held in Concord, NH.
- Mr. Campbell said he had met with Doug Banks, and would forward notes to Board members. He said they had discussed the T-Mobile application, and noted he had requested that someone from UNH be present at the October 22<sup>nd</sup> meeting. He said they also talked about the upcoming traffic and safety meeting, the Housing Office (on hold at present); the Southern Underpass, the new police station; and Quad Way.
- Mr. Campbell said he had attended the UNH Transportation policy meeting – and told the Board he would forward a copy of their transportation projects update, as well as the update dealing with transportation elements of the Master Plan.
- He noted the next Zoning rewrite meeting on Wednesday, October 1<sup>st</sup> would be the final meeting on the latest draft before the public hearing on October 15<sup>th</sup>.

- He noted there would be no new applications for the next meeting, which would allow ample time to discuss the draft CIP.

IV. **Public Hearing on an Application for Subdivision** submitted by Doucet Survey, Newmarket, New Hampshire, and the Kitfield Family Trust, Durham New Hampshire, to create 2 lots from 1 lot. The property involved is shown on Tax Map 16, Lot 5-0, is located at 125 Long Marsh Road and is in the Rural Zoning District.

Steve Michaud from Doucet Survey spoke to the Board on behalf of the applicant. Mr. Michaud noted that the site walk took place the previous day with Planning Board members. He showed a map that indicated the location of the Kitfield property in relation to several conservation parcels nearby, and observed that a corridor of contiguous conservation properties was developing. He pointed out on the subdivision plan that the overall acreage of the Kitfield property was 67.5 acres, and the proposed house lot to be subdivided out from the larger parcel was 3.892 acres.

***Councilor Grant MOVED to open the public hearing. The motion was SECONDED by Nick Isaak, and PASSED unanimously.***

There were no members of the public to speak for or against the application.

***Councilor Grant MOVED to close the public hearing. Stephen Roberts SECONDED the motion, and it PASSED unanimously.***

Chair Watt asked Board members if they wished to schedule the matter for deliberation.

Mr. Roberts asked Jim Campbell if there were any issues of concern regarding the application. Jim Campbell said there were not. He noted a memorandum he had written which reviewed the application in detail. He said the applicant had needed a variance from the ZBA in order to keep the lot at 3.892 acres with the current house and two apartments, and that this had been obtained. He said conditions of approval included removal of an accessory apartment and the chicken coop, and said these would have to be carried out before the Planning Board chair would sign the mylars. He noted a reference to these conditions had been put in the Findings of Fact. Mr. Campbell also noted that the easement language for the turnaround in favor of the town would have to be reviewed by the Town attorney and approved. He explained that some waivers had been requested, concerning design standards, construction plans, and construction guarantees, and recommended these should be granted.

Mr. Roberts asked if there was a report from the Technical Review Committee or the Public Works Director substantiating that the current road supported the subdivision. Mr. Campbell said Public Works had no issues with the application, nor did the police and fire department.

Mr. Michaud said the ZBA variance decision language had been quoted verbatim on the subdivision plan. He said the monumentation on the proposed house lot had been installed, but that the easement language for the turnaround had not been prepared yet.

Chair Watt asked if the Board needed to schedule for further deliberation. It was agreed that deliberation on the Findings of Fact/Conditions of Approval could be done under Old Business.

- V. **Public Hearing on an Application for Subdivision** submitted by Douglas L. Baker, Durham, New Hampshire, to create 2 lots from 1 lot. The property involved is shown on Tax Map 18, Lot 12-6, is located at 263 Newmarket Road and is in the Rural Zoning District.

Arthur Grant said he would recuse himself, so Councilor Harris would have the opportunity to participate as a voting member of the Board.

***Kevin Webb MOVED to open the public hearing. The motion was SECONDED by Nick Isaak.***

It was noted that the applicant was not present at the meeting. Board members indicated the attorney said he would be present.

Mr. Webb withdrew his motion to open the public hearing.

***Annmarie Harris moved to modify the Agenda by putting Item V (Public Hearing on Baker Application for Subdivision) after Item VIII. Nick Isaak SECONDED the motion.***

Chair Watt asked if anyone had come to speak on the application.

***The motion PASSED unanimously.***

- VI. **Acceptance Consideration of an Application for Boundary Line Adjustment** submitted by Winecellar Farm, Inc. on behalf of themselves and Kendree R. Parker Rev. Trust, Durham, New Hampshire to change the boundary line between two properties. The properties involved are shown on Tax Map 16, Lot 30-0 and Lot 30-5, are located at 21 and 10 Winecellar Road and are in the Rural District.

Mr. John Myhaver of TF Moran Surveyors represented the applicant before the Board. He explained that currently, the Parker Trust owned Map 16, Lot 30-5, had 24.37 acres, and would like to take 12.0 acres of it and attach that to the remainder of the Winecellar property, which would increase from 175.55 acres to 187.55 acres. He noted the remaining acreage of Lot 30-5 would be 12.37 acres. . He listed three waivers that were requested; a waiver of 1"=100' scale in order to be able to show the entire acreage of the two lots; a waiver of construction requirements, since the existing structures were shown, and no additional construction was proposed; and a waiver from design standards, because no new design was proposed.

Mr. Campbell asked Mr. Myhaver if there were any easements on the larger lot. He told the Board and the audience that boundary line adjustments were considered minor procedures under the subdivision regulations, so a public hearing and site walk were not required, but notices to abutters were required and had been sent out. He explained that

requests from abutters and holders of conservation, preservation or agricultural preservation restrictions could be heard upon request, and noted he had heard no such requests. He explained that since this was considered a minor subdivision procedure, the Board could accept and act on the application that evening.

Mr. Roberts asked if there were any accesses or easements, related to the property. Mr. Myhaver said there was an easement from the frontage on Winecellar Road to get to the abutting Lot 30-1.

Mr. Roberts asked if there was any open land percentages, water bodies, or drainages on the property. Mr. Myhaver said Comet Creek crossed the larger property, but Lot 30-5, the property that was being subdivided, contained no water bodies.

Councilor Grant asked what the line was that ran along the western edge of the property on the Locus plan, and cut into the property somewhat. Jim Campbell said he did not think it affected the boundary lines, but asked that it be shown on the final plan.

The applicant from the previous Item showed a map which indicated the flow of Comet Creek, and demonstrated that the creek had nothing to do with the subdivision parcels.

Jim Campbell said the Board could require that as a condition of approval, Comet Creek be shown on the subdivision plan.

Chair Watt asked if the application was ready for acceptance. Mr. Campbell said it was.

Annmarie Harris said that since notice had been given to abutters, they should have the opportunity to ask questions. There were no abutters to speak.

***Stephen Roberts MOVED to accept the Application for Boundary Line Adjustment submitted by Winecellar Farm, Inc. on behalf of themselves and Kendree R. Parker Rev. Trust, Durham, New Hampshire to change the boundary line between two properties. The properties involved are shown on Tax Map 16, Lot 30-0 and Lot 30-5, are located at 21 and 10 Winecellar Road and are in the Rural District. The motion was SECONDED by Amanda Merrill and PASSED unanimously.***

Chair Watt noted the Board would deliberate on the Findings of Fact/Conditions of Approval for this Item under Old Business.

- VII. **Acceptance Consideration of an Application for Boundary Line Adjustment** submitted by Smithfield Construction Co. Inc., Portsmouth, New Hampshire to change the boundary line between two properties. The properties involved are shown on Tax Map 1, Lot 16-10 and Lot 16-11, are located at 5 and 3 Fitts Farm Drive and are in the Residence A Zoning District.

Chair Watt noted that the applicant was not present to speak before the Board.

***Councilor Grant MOVED to defer the Item to the next meeting. The motion was SECONDED by Amanda Merrill.***

Kevin Webb said he would prefer that the Item be postponed within the evening's agenda, since the applicant was probably expecting to be heard later on at the meeting. He said if he did not appear by the time Old Business was being heard, the Item should be deferred to the next meeting.

Annmarie Harris asked if anyone had come to speak on the application.

Chair Watt questioned whether it was appropriate to hear this now, since the detail on the application was not being presented first. It was clarified that this was an acceptance hearing, but because the application represented a modified procedure, it could be approved the same evening.

Councilor Grant withdrew his motion, so that Item VII could be heard after Items VIII and V.

Ms. Harris noted there were people in the audience who would like to respond to the application, and asked how long it would take to get to this Item. Jim Campbell noted this was not an extremely complicated application. It was agreed by the Board that although the applicant was not present, the abutter should have the opportunity to voice their concerns.

**Winston Kreachbaum, 1 Fitts Farm Road**, said his property was Lot 16-12. He explained that the foundation of Lot 16-10 was put in improperly, so the boundary lines are being moved over 7 ft, so that the new house to be built on Lot 16-11 would be considerably closer to his lot line. He said there would have a negative impact on his home. Ms. Kreachbaum said they were concerned about their privacy, but also were concerned about a possible decrease in the value of their property, because the house on the abutting property would be closer than it was represented to them when they purchased their property.

Chair Watt noted the side lot setback on the lot adjacent to the Kreachbaums would not be affected by the plan. He said their testimony was useful, however.

Mr. Roberts asked if the side abutment to their property would change, and was told it would not.

The applicant Joseph Caldarola, Smithfield Construction arrived, and spoke before the Board. He said when the foundation for Lot 16-10 was dug, it was 3 ft. too close to the lot line. He explained that the boundary line adjustment would take place between Lot 16-10 and 16-11, and would be done in a way that would avoid having an odd, non-intuitive lot line for homeowners on both lots.

Amanda Merrill explained the Kreachbaum's concerns to Mr. Caldarola, who had not been present to hear them.

Nick Isaak asked if would be possible to make the house on Lot 16-11 a bit narrower than the typical house, in order to address the Kreachbaum's concerns.

Mr. Caldarola said there was plenty of width to center a house with the existing configuration, and that the house on Lot 16-11 would only be about 1 \_ ft closer, and would not be a noticeable difference. He explained that the mistake was made because they were trying to get away from building on the top of the knoll, so they wouldn't have to deal with grade problems, but that they pulled it a bit too far away from the knoll.

Steve Roberts asked if Mr. Caldarola was saying that Lot 16-11, when built, would not need to be changed from the previously planned location. Mr. Caldarola said it would be change by a couple of feet.

Kevin Webb asked if the same grade problems existed on Lot 16-11, and was told they did not. He then asked if there was any way the house could be laid out relative to the original boundaries, and not the adjusted boundaries, based on the Kreachbaum's concerns.

Mr. Caldarola said that would not be a problem, and said the plan was always to arrange the houses so everyone would be happy.

Chair Watt asked if the application was ready to accept.

***Kevin Isaak MOVED to accept the Application for Boundary Line Adjustment submitted by Smithfield Construction Co. Inc., Portsmouth, New Hampshire to change the boundary line between two properties. The properties involved are shown on Tax Map 1, Lot 16-10 and Lot 16-11, are located at 5 and 3 Fitts Farm Drive and are in the Residence A Zoning District. The motion was SECONDED by Kevin Webb and PASSED unanimously.***

Chair Watt said deliberation on the Findings of Fact for this Item would be done under Old Business or at a later date.

- VIII. **Acceptance Consideration of an Application for Boundary Line Adjustment** submitted by Gamma Theta Corporation, Portsmouth, New Hampshire on behalf of themselves and Granite Bank, Durham New Hampshire to change the boundary line between two properties. The properties involved are shown on Tax Map 2, Lot 14-2 and Lot 14-5, are located at 66 and 70 Main Street and are in the Central Business Zoning District.

Chair Watt asked if the applicant was present to speak. The applicant was not present.

***Councilor Grant MOVED to defer the Item to the next meeting, on Oct 8<sup>th</sup>, 2003. The motion was SECONDED by Amanda Merrill and PASSED unanimously.***

**Public Hearing on an Application for Subdivision** submitted by Douglas L. Baker, Durham, New Hampshire, to create 2 lots from 1 lot. The property involved is shown on Tax Map 18, Lot 12-6, is located at 263 Newmarket Road and is in the Rural Zoning District.

Chair Watt said Councilor Harris would be voting on this Item.

***Annmarie Harris MOVED to open the public hearing. The motion was SECONDED by Amanda Merrill and PASSED unanimously.***

**FX Bruton**, attorney with McNeill, Taylor and Gallo, apologized for being late, and spoke for the applicant. The applicant said he proposed to divide the 7.15 acre lot into two lots, one of which would be a pork chop lot, as shown on the plan. He noted access would be provided over a shared common driveway from Route 108/Newmarket Road. He said a conditional use permit would be needed for a minor crossing of wetlands, and said Larry Morse of NH Soil Consultants would provide details on this to the Board. He indicated that questions raised by Jim Campbell in his memo had been addressed.

He noted the first request was a waiver from the subdivision regulations with respect to showing drainage calculations. He said there was also a request for a conditional use waiver, and another waiver request to allow a driveway off of Route 108. He said this waiver was being requested because it was the only available frontage. He said a 15 ft wide driveway had been created within a 30 ft easement, based on a comment from the Board. He said a request had been made during the site walk concerning radii around the driveway, and said that would be done before the vote on approval. He said there was an issue with respect to the minimum lot size, and said a minor reconfiguration would be done to addressing that. He introduced Larry Morse of NH Soil Consultants to discuss the wetland issues.

**Larry Morse, NH Soil Consultants**, said he was working with the applicant to get the wetlands permit for the driveway access and to address any outstanding issues that existed on the property. Mr. Morse said there were two small areas where a driveway would be constructed that would require filing of a minimum impact permit with NHDES. He noted he had had preliminary conversations with NHDES, and said they were aware the applicant was proposing to use the alignment of the existing roadway as much as possible in order to minimize the wetland impact. He said he would be meeting with NHDES on Friday to work out those issues, so the engineering could be finalized, and noted a drainage analysis would be conducted. He said there did not appear to be any issues that could not be addressed through this process.

Chair Watt asked if there was anyone to speak in favor or against the application.

Annmarie Harris noted that at the previous meeting, she had asked about potential access to the property from Stagecoach Road.

Mr. Bruton said the abutting property would be affected by providing that access. He said this parcel was going to be put on the market, and he felt that providing that access would impact the property, which wasn't even part of the subdivision. He also said there was concern about protecting another abutter, who had an interest in not having that driveway come in off of Stagecoach Road.

Stephen Roberts said that the site inspection indicated that even the access from Stagecoach Road onto Route 108 was of concern, and having a driveway plus Stagecoach Road was of even more concern. He said from a planning point of view, the fewer

driveway cuts on a 45 mile an hour highway the better, and said he was inclined to agree with Ms. Harris's position.

Ms. Harris said the granting of a waiver to allow the driveway onto Route 108 was the key issue, and asked if the parcel next to the proposed subdivision was under the same ownership. Since the request was to further subdivide, was there really a "hardship" concerning the access

Mr. Bruton said the only frontage the lot had was on Route 108, and that providing orderly development of the area was the basis for the request, not the desire to save money. He said he did not believe that whether or not there was another abutter where the access could go should be part of the consideration made by the Board. He also stressed that this was to be a very limited subdivision.

Ms. Harris said that before the subdivision, the lot was a viable lot for one driveway cut, but the applicant was asking for multiple use of a single lot by subdividing it. She noted it was not that there was not value in that lot as it existed now, but rather that the applicant wanted to double the value of the property, and have twice as many cars accessing Route 108.

Mr. Roberts said the site walk indicated the access would be an extreme driveway, and said minimizing the number of cuts onto Route 108 was considered a best practice in highway design. He also noted there was a large pond on the other side of the Millett land, and that the status of the berm and underdrain that crossed the pond was not known.

Jim Campbell asked if there was a site distance problem that related to the access issue.

Chair Watt asked if the driveway permit from NHDOT had been obtained, and was told it had been applied for.

Mr. Bruton asked the Board for the opportunity to look at the access issue again, and come back with revisions to the plan.

Jim Campbell said if the Board said it would not waive the requirement of a new lot having its access drive off of Route 108, we would need to give them another waiver. He said that during the previous application from this applicant, there was a letter submitted by the abutters, the Milletts, expressing concern that providing access off of Stagecoach Road would surround their property. So if the Board said no to Route 108 access, would it put more pressure on them. He noted the second part of the waiver was the frontage issue, and agreed they did not have any viable alternative for road frontage. He asked Mr. Bruton if they had determined the site distance, noting this was a concern of the Public Works Department.

Richard Ozenich noted Mr. Baker mentioned the driveway access was proposed on Route 108 out of consideration for the Milletts.



Ms. Harris explained that she was very familiar with the location under discussion, and said it was an extremely dangerous area for access to Route 108. She said this was her prime reason for thinking the proposal would all significantly to the danger for the entire community, as compared to an inconvenience to an abutter on Stagecoach Road.

Mr. Bruton said he understood what she was saying, and said he would attempt to resolve the issue.

Kevin Webb requested that if Mr. Bruton was not able to resolve the issue by providing access at Stagecoach Road, he should show all of the driveways on the opposite side of Newmarket Road on the plan. Board members also said placement of the Milletts' house and driveway would be helpful.

Chair Watt said the applicant would be looking into this.

Jim Campbell suggested keeping the public hearing on the Item open. He also noted, concerning site work if the subdivision was approved, that if more than one acre of land was to be disturbed, the new EPA stormwater rules would apply, and the owners would be responsible for getting the required permits.

Chair Watt noted that the Board had adopted a policy of not allowing continuous amendments as an application proceeded. He asked the Board in view of this how they wished to proceed.

Mr. Roberts said Mr. Bruton had made a gesture to find additional facts, and show additional information concerning driveways, and based on this and other information, the Board should consider the revised plan, and determine if an alternate access was possible.

Ms. Harris said it would be good to hear the application again when more of the issues were resolved. She pointed out if there was a possible revision involving Stagecoach Road, additional abutters would need to be notified.

Chair Watt asked whether a new application would be required.

Mr. Bruton said that if it would be easier for the Board, the applicant could have a final plan two meetings from now.

Mr. Roberts asked that the wetland on the Millet property be shown.

Mr. Morse noted that because of a disagreement between the abutters, access to the property was difficult, but said they could approximate the conditions if they could not get access. It was agreed that an aerial photo could provide useful information.

Board members agreed that the existing application should be continued.

***Kevin Webb MOVED to continue the public hearing until Oct 22<sup>nd</sup>, 2003 The motion was SECONDED by Stephen Roberts.***

Ms. Harris suggested that the application not be heard again unless all of the needed information was available at the next meeting. She noted that the application had been continued previously.

***The motion PASSED unanimously.***

## **IX Other Business**

### **A. Old Business**

**FINDINGS OF FACT – CONDITONS OF APPROVAL of the Application for Subdivision** submitted by Doucet Survey, Newmarket, New Hampshire, and the Kitfield Family Trust, Durham New Hampshire, to create 2 lots from 1 lot. The property involved is shown on Tax Map 16, Lot 5-0, is located at 125 Long Marsh Road and is in the Rural Zoning District.

Councilor Grant noted he had recused himself at the prior meeting so Councilor Harris could participate.

The Findings of Fact, Waivers and Conditions of Approval were reviewed. Jim Campbell noted that the site walk and public hearing should be listed. Kevin Webb said it should be noted that no one had spoke against or for the application at the public hearing, other than the applicant.

Mr. Webb asked Jim Campbell to note under Waivers that a septic design had been done.

***Amanda Merrill MOVED to approve the Findings of Fact and Conditions of Approval, as amended, of the Application for Subdivision submitted by Doucet Survey, Newmarket, New Hampshire, and the Kitfield Family Trust, Durham New Hampshire, to create 2 lots from 1 lot. The motion was SECONDED by Annmarie Harris, and PASSED unanimously.***

**FINDINGS OF FACT – CONDITONS OF APPROVAL** concerning Application for Boundary Line Adjustment submitted by Winecellar Farm, Inc. on behalf of themselves and Kendree R. Parker Rev. Trust, Durham, New Hampshire to change the boundary line between two properties. The properties involved are shown on Tax Map 16, Lot 30-0 and Lot 30-5, are located at 21 and 10 Winecellar Road and are in the Rural District.

The Findings of Fact, Waivers and Conditions of Approval were reviewed by the Board. Jim Campbell said he had questioned the need for waivers for design standards and boundary line adjustment because a buildable lot was not being created. But he said since the waivers were requested, they were put in. He also said he did not have a problem with the waiver request to allow a smaller map scale and also the waiver concerning a construction plan. He noted that Crommet Creek should be added as an additional condition of approval.

***Stephen Roberts MOVED to approve, as amended, the Findings of Fact concerning the Application for Boundary Line Adjustment submitted by Winecellar Farm, Inc. on behalf of themselves and Kendree R. Parker Rev. Trust, Durham, New Hampshire to change the boundary line between two properties. Councilor Grant SECONDED the motion, and it PASSED unanimously.***

**FINDINGS OF FACT – CONDITONS OF APPROVAL** concerning Application for Boundary Line Adjustment submitted by Smithfield Construction Co. Inc., Portsmouth, New Hampshire to change the boundary line between two properties. The properties involved are shown on Tax Map 1, Lot 16-10 and Lot 16-11, are located at 5 and 3 Fitts Farm Drive and are in the Residence A Zoning District.

The Findings of Fact, and Conditions of Approval were reviewed by the Board. It was noted that no waivers were needed or requested.

Amanda Merrill noted that under Findings of Fact, a full sentence concerning the list of abutters should be added.

It was noted that comments were heard from the abutter although there was not a public hearing. Amanda Merrill suggested that language on the concerns raised by the abutter should be added as #7 under the Findings of Fact. Kevin Webb said the response from the applicant should be noted as well. Board members agreed that this was not binding information.

Mr. Roberts asked if the Findings of Fact should note that the relocation of the boundary line did not mandate any change to the placement of the new house.

Board members asked where language regarding this would be most appropriate. Mr. Campbell said the statement would be put in the minutes.

“Under the modified subdivision procedure, the planning board granted a request by concerned abutters – the Kreachbaums, to be heard.”

Chair Watt also noted the response from the applicant should be noted.

***Councilor Grant MOVED to approve the Application for Boundary Line Adjustment submitted by Smithfield Construction Co. Inc., Portsmouth, New Hampshire to change the boundary line between two properties. The motion was SECONDED by Kevin Webb and PASSED unanimously.***

B. New Business: Discussion of Technical Review of Fleet Bank Site Plan Application.

The Board discussed the planned use of the site. Mr. Campbell said only one person, the applicant, was at the Technical Review committee meeting concerning the application.

Ms. Harris asked if there would be any supervision of the site.

Mr. Grant noted a condition of approval was that there would be no access to the area without an active ATM card.

Jim Campbell noted that lighting as well as uninterrupted vision from Main St. would be adequate

Nick Isaak asked if a wall had been proposed to make a smaller vestibule. Mr. Campbell described the layout, including a door from the front, and a small vestibule.

Ms. Harris asked if the owner had the option to sublet the space at the back and was told by Mr. Campbell they did not without going through review. He said he had noted, under conditions to be met subsequent to the Signature of Approval on the Findings of Fact, that a sentence was added concerning possible future expansion of the ATM facility to a branch bank. She noted “any other use” should be added to this sentence.

C. Next Meeting of the Board: October 8, 2003

X. **Approval of Minutes**

August 13, 2003

August 25, 2003

August 27, 2003

I WILL SEND THIS SEPARATELY

XI. **Adjournment**

The meeting adjourned at 9:40 pm.

Victoria Parmele, Minute Taker