

## Danbury Planning Board

June 13<sup>th</sup>, 2023

### Un-Adopted

The Danbury Planning Board met on Tuesday June 13<sup>th</sup>, 2023 in accordance with the schedule adopted and posted. John Taylor called the meeting to order at 7:00 p.m. and welcomed everyone present. John asked if anyone had a conflict of interest and hearing none proceeded with the meeting.

#### **Present:**

John Taylor, Chair

Mark Zaccaria, Vice Chair

Matthew Remillard, Secretary

Ruby Hill, Selectmen ex-officio

Anna Offen, clerk

Gary Donoghue

Jim Phelps, alternate

#### **Not Present:**

**Guests:** John Marchand, James Long, Andy Nadeau, Tim Britain, Nick Vertefeuille, Phil Hastings, Mike Donovan, Chris Fore, Jon Warzocha, Jess Hatch, Tim Martin, Jeff Deuink

John Taylor appointed Jim Phelps to be a voting member of the Board.

The board reviewed the minutes from May 9<sup>th</sup>, 2023 Tim Britain would like it stated in the record that he and his client “believe the draft minutes of the May 9 hearing are incomplete and do not fully reflect all discussions and decisions made at the hearing”. He objected to the completeness in both an email at verbally at the meeting. Ruby Hill suggested amendments. Mark Zaccaria made a motion to approve the minutes as amended, Matthew Remillard seconded. **Motion passed unanimously.** *\*Amendments to include: Remove “Traffic Study, etc. from Ruby Hill’s items to be addressed (pg 4); Correct the spelling from “Jon” to John on pg 4; Remove the incomplete sentence “Mark and JT asked..” on pg 4.*

At 7:08pm John Taylor opened the continued public hearing on subdivision for 3J Farms, property located at 234 Eastern District Rd, Tax Map 410, Lot 90. John gave an overview of the updates. He reviewed the definitions of “contiguous” with Town Counsel and it was the opinion of the attorney that the Board’s understanding of the definition is correct, the buildable land must be a contiguous 2 acres and not made up of separate acreage throughout the lot.

Tim Britain stated that what they took away from the last meeting, was that the Board was looking for clarification/updates on the definition of contiguous, updated storm water report, test pit results and to show the easement for lot 9 on the plan. He believes that they have satisfied the

requirements of the subdivision regulations and addressed those concerns. He also stated that they stand by their definition of contiguous.

John let the board and the audience know that FEMA has just updated the flood plain map. Andy Nadeau spoke to that – it is not uncommon to have preliminary maps that have not been adopted. And that there is no substantial change in the maps. John said that lot 1 is impacted, but Andy said that it does not impact the buildable area. Also, since the new maps have not been adopted by the town, they have to go by the current, adopted maps.

John Taylor asked when you submitted the plan on May 9th – acreage had been added to the lots – was this the same change as then, or has additional area been added to the lots? And Nadeau answered that Lot 1 has a little bit less; Lot 2 has a little bit more. John said that it does look like our competing definitions of contiguous will come into play on these lots.

John Marchand (abutter) – in the first meeting minutes John Taylor asked for a peer review – what came of this? John answered that the board discussed this and decided to delay this request based on the definition of contiguous, so it has not been requested.

Mark Zaccaria asked does Horizons feel satisfied that the water and septic can co-exist in the lots? Andy asked which lost specifically – Mark said all of them. Can a house be built there and have both systems, in their professional opinion? Andy answered yes. Some of the lots do not require DES approval (if they are over 5 acres total).

John Taylor asked Phil to speak to the definitions (of contiguous) disagreement. Phil mentioned that since they were not able to see the letters from Town Counsel, they are at a little bit of a handicap when it comes to the determination of the definition. He feels that there is nothing in the plain language of the ordinance that states that the remaining buildable land needs to be contiguous. They are ready to defend their position. They mentioned previous approved subdivisions that show support their position and their understanding of the definition of contiguous. John stated that he would have shared the letters with Phil, but was advised not to by the attorney.

John asked if the client would consider going with a cluster development? Phil said no and Jeff Deuink said no. Phil answered that it occurs to him from looking at the land what is being proposed here is a cluster subdivision -the lots are close to the street and close together, back land is preserved. John agrees that it appears that the plan is a cluster, just not in name.

Gary Donoghue stated that he does not want to take away anyone's lands rights, but he feels that this land is hard to subdivide. He also does not feel that it is his place to disagree with town counsel.

Jim Phelps mentioned that he has been on the board since 1975 and the two acre minimum has been a point since before the LUZO was created. He does not feel that the subdivision supports the spirit of the ordinance as written.

Mark Zaccaria said that his concern is not necessarily with the buildable area, but the permeability of the land for septic and water systems.

Jim Phelps made a motion that the application be denied due to the Town's definition of the term "contiguous" land requirement, Matthew Remillard seconded. Roll Call Vote: Jim Phelps – yes, Mark Zaccaria – yes, Anna Offen – yes, John Taylor – yes, Ruby Hill – yes, Gary Donoghue – yes, Matthew Remillard – yes. **Motion passed unanimously.** Tim Britain asked for clarification on the denial. John said that they can go to the ZBA, come back with an updated plan (with contiguous buildable land shown), or they can appeal to the Superior Court or Housing Authority. At 7:43pm closed the public hearing.

The Board reviewed the minutes from May 23, 2023. Two amendments were suggested. Ruby Hill made a motion to approve the minutes as amended, Mark Zaccaria seconded. **Motion passed unanimously.** *\*Amendments to include: Page 3 – third line down, change "sent" to set; Page 3 – fourth line down – add an "s" after feel*

At 7:55pm John Taylor opened the continued public hearing on the Master Plan update for Ragged Mountain Resort. Mike Donovan reviewed the memo that he had created and sent. He is not recommending any new changes. Gary Donoghue asked if any of the changes are substantive, Mike answered yes.

On Tab 2 – he feels that Ragged addressed his concern on how to calculate the open space.

Tab 3 – he thought that they did a good job of updating the Natural Resources Management Plan.

Tab 4 – the principle change – on the Community Governance – a statement has been added that if the applicant of a subdivision is not a party of the mountain, then Ragged will be a party to the CC&R's.

Mark Zaccaria made a comment that he is pleased with the partnership between the board, the applicant and the town.

John Taylor provided a letter written by Chris Fore to Attorneys Mike Donovan and Phil Hastings for review. The letter was previously sent to the Board member via email. Chris's biggest concern is the amount of proposed building. Phil Hastings reminded the public that the approved cluster development has been in place since 2008, they are just updating the plan to better fit with today's climate. They are not looking to go against any ordinance. John Taylor also reminded Chris that the review all came about because when the subdivision application was submitted, the board felt that it was time to update the plan.

Chris Fore – one final comment regarding the phased approach of development. He feels that it is going to take some major diligence by the board to consider that the open space is calculated correctly.

John Taylor read an email that was sent to the Board from a person that requested to remain confidential into record. The email references an article which details a lawsuit against Ragged Mountain. Phil is familiar with the article and the lawsuit.

Mark Zaccaria made a motion to adopt the notice of decision and underlying update to the Master plan, pursuant to typographically errors being corrected, Anna Offen seconded. Roll Call Vote: Jim Phelps – yes, Mark Zaccaria – yes, Anna Offen – yes, John Taylor – yes, Ruby Hill – yes, Gary Donoghue- yes, Matthew Remillard – yes. **Motion passed unanimously.**

Anna Offen asked that a version be sent via electronic means, Phil said yes he will do that.

Mike Donovan asked about the development agreement and when that would be updated. There will need to be a public hearing on this (maybe August 8). At 8:27pm closed the public hearing.

At 8:28pm John Taylor opened the public hearing on the Forest Knolls West Subdivision, property located on Ragged Mountain Road. Jim Phelps still has concerns about the drainage on the hill. Based on their analysis of the drainage “problem” they do not believe that anything in the Forest Knolls subdivision will cause any additional issues. Jim pointed out that traffic would increase due to the 8 lots, and the road is not in great shape. He asked again if we have the right to impose an exaction, rather than enhanced building fees. Mike Donovan thinks that we can, but we have to show what it will be for. Gary Donoghue reading from page 5 of the Master Plan agreement . . . .he feels that we could forego the building fee for improvements to a road. Mike Donovan said that he asked that Phil clean up the language in this section to cover this.

Gary asked what the cost would be to improve the road. Jess Hatch answered that it would be about \$250,000, that is just from New Canada Rd to Deckman Rd. Gary asked what is the enhanced building permit fee? Phil answered that it is tied to the construction cost index. Mike Donovan read from the development agreement. Each dwelling is charged \$1,390, to be adjusted by the construction cost index. Jim requested \$25,000 in lieu of building impact fees to go towards the road. Mike said that we would need to amend the development agreement to allow this to happen.

Tim Martin (resident) and road agent for Wilmot. He does not think that \$3000 is sufficient per lot for the amount of impact. He thinks that the town should have an impact fee across the board and that might be something for the board to think about. He also asked that we do not forget about the Wilmot residents on New Canada road since the majority of the traffic on that road is from the mountain. He asked that we please consider his comments. John Taylor thank him and said that appreciates the input.

Mike Donovan - when we discussed the master plan before, there was discussion that Forest Knolls West would not provide a traffic study update. Forest Knolls East will require this and Mike wanted to remind the board about this.

John asked when the work on the lots would begin, Jon W answered hopefully in the fall and Phil said that they might start marketing in the fall.

Mike Donovan asked how is the open space requirement being met for this subdivision? Phil answered that this is from the 100 acre conservation Fish & Game Land.

Mike asked that he not be included in this decision until he has time to review the plans.

Ruby Hill made a motion to continue the public hearing to June 27<sup>th</sup>, Jim Phelps seconded. **Motion passed unanimously.** The Board will be looking for State and local improvements of permits (alteration of terrain has been submitted), submission and review of the CC&R's, Selectmen approval of right of way access for well, Ragged pays \$25,000 for road improvements in lieu of building impact fees, Ragged provides a plan showing open space land for the two subdivisions that have been approved and what is left.

John read the following building permit into the record:

Albert and Beth Desmarais, 46 Hoyt Brook Rd, Tax Map 408, Lot 047, 22 X 24 addition on garage with 1 bedroom 1 bath living space

John H Byron, 131 NH Route 104, Tax Map 411, Lot 001, Roof top solar array – HANWA Q 400/25 modules

Margie Lim Morrison and Wells Morrison, 334 New Canada Rd, Tax Map 415, Lot 022-002, Rooftop solar 30 HANWHA Q cells

John and Amy Little, 49 Sheldon Rd, Tax Map 409, Lot 083, 10 X 20 prebuilt Amish shed and 14 X 24 shed

Harry and Rae Green, 44 Courtland Dr, Tax Map 201, Lot 105, 24 X 48 addition on garage/ will have 1bdm ADU tied into existing septic

Anna Offen made a motion to move the Annual CIP review to the meeting on 7/11/23 and will be noticed as such, Jim Phelps seconded. **Motion passed unanimously.**

At 9:20pm Jim Phelps made a motion to adjourn, Gary Donoghue seconded. **Motion passed unanimously.**