

**TOWN OF EXETER
PLANNING BOARD
August 27, 2020
VIRTUAL MEETING
DRAFT MINUTES**

Zoom ID: 874 5591 3768

Phone: 1 646 558 8656

I. PRELIMINARIES:

BOARD MEMBERS PRESENT BY ROLL CALL: Chair Langdon Plumer, Vice-Chair Aaron Brown, Pete Cameron, Clerk, Gwen English, John Grueter, Molly Cowan, Select Board Representative, Pete Steckler, Alternate and Nancy Belanger, Alternate.

STAFF PRESENT: Town Planner Dave Sharples

II. CALL TO ORDER: Chair Plumer called the meeting to order at 6:38 PM, indicated Alternate Nancy Belanger would be active, and read out loud the meeting preamble which indicated that an emergency exists and the provisions of RSA 91-A:2 III (b) are being invoked. As federal, state and local officials have determined gatherings of ten or more people pose a substantial risk to the community and the meeting imperative to the continued operation of Town and government and services which are vital to public, health, safety and confidence. This meeting will be conducted without a quorum physically present in the same location and welcome members of the public accessing the meeting remotely.

III. OLD BUSINESS

APPROVAL OF MINUTES - Tabled

July 23, 2020

August 13, 2020

August 20, 2020

IV. NEW BUSINESS

PUBLIC HEARINGS

1. Second public hearing on the 2021 CIP Projects - Tabled

2. Continued public hearing on the application of Gateway at Exeter, LLC for a proposed lot line adjustment and subdivision at 170 Epping Road. The lot line adjustment will transfer 2.10 acres of land from Tax Map parcel #47-7 to Tax Map parcel #47-6; and subsequently a proposed subdivision of Tax

42 Map parcel #47-7 into two lots in conjunction with a mixed use development being proposed for the
43 site.

44 C-3, Epping Road Highway Commercial zoning district
45 PB Case #19-15.

46
47 3. Continued public hearing on the application of Gateway at Exeter, LLC for a site plan review and a
48 Wetlands Conditional Use Permit for the proposed construction of a mixed-use development at 170
49 Epping Road (TM #47-6 and #47-7). The proposal includes a 224-unit multi-family residential complex, a
50 2-story 48,560 square foot mixed use building that may include a 20,040 YMCA day care facility,
51 office/retail space and possibly a restaurant along with associated site improvements.

52 C-3, Epping Road Highway Commercial zoning district
53 PB Case #19-16.

54
55 Chair Plumer read the Public Hearing Notice out loud.

56
57 Chair Plumer noted after closing the public meeting the Board received a letter dated August 25, 2020
58 from Attorney Leonard. Chair Plumer indicated the Board could reopen to discuss the letter and only
59 the letter.

60
61 Mr. Steckler indicated he was frustrated with the second part of the letter as a mischaracterization of
62 record, referencing a false statement about the primary function of the wetland. Condition #3 of 9.16b.
63 Applicant is not addressing wildlife habitat as a primary value. Mr. Steckler acknowledged Tracy Tarr's
64 opinion while disagreeing with it about connectivity across Epping Road. Agreed that is restrictive to
65 movement but strongly disagree it is a barrier. A lot of wildlife cross roads during the night as he has
66 observed himself.

67
68 Vice-Chair Brown noted this is the crux of the CUP. Applicant says functions and values assessment was
69 completed. 13 functions were identified.

70
71 Chair Plumer noted recharge and discharge, shellfish and fish habitat, sediment, toxin retention, excess
72 nutrient prevention, production export, sediment shoreline stabilizer, wildlife habitat, recreation,
73 educational value, uniqueness and heritage.

74
75 Vice-Chair Brown noted most wetlands in area are evaluated together. Two areas adjacent to Epping
76 Road are evaluated separately. Wetlands lack value for most of these functions. These functions were
77 supported: wildlife habitat, production export and sediment and toxin restriction. The level of wildlife
78 habitat is moderate, not much different from adjacent uplands. No egg masses observed. Habitat level
79 of the two possible vernal pools are higher.

80
81 Ms. English noted application leads me to believe this area has low value with groundwater recharge.
82 Putting impervious surfaces on most of this lot. Lot of pending due to glacial tills with soils. May not be
83 perfect for groundwater recharge but still may be significant. Tracy Tarr said connectivity very important
84 to creatures dependent on vernal pool. The more development surrounding pools the less viable they
85 become over time. The vernal pool 15' from the entrance worries me.

86

87 Ms. Belanger noted to remember that Tracy Tarr said the back 40 acres would offset the two pools in
88 discussion. Ms. English indicated that was correct, she did talk about the importance of the back
89 wetlands

90

91 Chair Plumer noted Condition #4 says minimize detrimental impact and no feasible alternative.

92

93 Vice-Chair Brown noted response to is to slide minimum elements as far east as possible. Front pools
94 are not being impacted. Stormwater management systems will protect water quality. Think this goes
95 back to Nancy Belanger's comments as far as handling vernal pools on entire parcel not just where
96 development will occur.

97

98 Chair Plumer noted Condition #5 says construction impact will be restored.

99

100 Vice-Chair Brown noted response is not temporary impacts but will be restored to maximum effect
101 possible.

102

103 Chair Plumer noted Condition #6 says no hazard to public welfare.

104

105 Vice-Chair Brown noted response is the clean nature of proposed use. Mitigation proposed including
106 conveyance of backland and ARM contribution of \$176,000 in addition to preservation.

107

108 Chair Plumer noted Condition #7 says all required permits obtained.

109

110 Vice-Chair Brown noted response says permits will be applied for. Heard substantial testimony on the
111 matter. Overall impact is probably the best it can be . Feel only way to reduce impact is to reduce size.

112

113 Chair Plumer noted that sums it up pretty well.

114

115 Ms. Belanger noted she looked at the vote for TIF, includes mixed use residential. Covered spirit of TIF
116 district.

117

118 Ms. English noted she agreed with Vice-Chair Brown. Think applicant has been very accommodating.
119 Still struggle with size and impact but recognize importance of back land.

120

121 Mr. Cameron indicated he also appreciated all the work done with the Traffic study, but several hundred
122 more cars on Epping Road is disturbing. Always been concerned with increased traffic on Route 27.
123 Think this project needs to be done to address issue of workforce housing. Mr. Grueter indicated he is
124 concerned about the look of buildings. Think they minimized impact to wetlands.

125

126 **Ms. English moved that the request for Gateway at Exeter, Planning Board Case #19-16 for a**
127 **Conditional Use Permit be approved after reviewing the criteria for a Wetlands Conditional Use**
128 **permit. Ms. Belanger seconded the motion. A roll call vote was taken Cameron – aye, Cowan – aye,**
129 **Belanger – aye, Grueter – aye, Brown – aye, English – nay, Plumer – aye. The motion passed 6-1-0.**

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Mr. Sharples noted the Conditions of Approval for the Site plan, doing a corridor study on Epping Road, looking at impacts to that corridor.

Ms. English noted the trees near the commercial building are an invasive species and recommends another condition that the applicant doesn't plant invasives and stick with native species.

Chair Plumer noted they discussed connecting the pathway and questioned whether to include as a condition? Mr. Sharples noted they can add trail connection as described by Attorney Leonard.

Mr. Grueter asked if the 112-unit condition has been made aware to applicant? Mr. Sharples indicated they are aware of the condition just not the exact language.

Mr. Grueter noted the trees between the roadway and pond on the rendering, there is a lot of wall to look at and recommends having some trees there. Mr. Sharples noted the front area with pond won't be disturbed. Will see more in winter. Will be a lot of trees between. Accurate on landscape plan.

Mr. Cameron noted the connector being built and asked if the use will be limited to the residents of the area? Will the public be able to use that trail? Vice-Chair Brown noted he doesn't think is any legal limitation to Town property. Mr. Sharples noted no intent for public access and no easements on plan. Mr. Grueter indicated he was not sure that was what we agreed to. Mr. Sharples indicated it connects to Conservation Land. Conservation Commission didn't want to encourage a trail network there. Can access this property through other lands.

Mr. Sharples noted they don't see proposed public access easements in theory the property owner could exclude but the Town will own the back 40 acres. Property owners have the right to exclude.

Vice-Chair Brown noted unless we require the easement on the parcel, the owners can deny access. The pathway is to guide access if it does end up getting accessed.

Mr. Sharples noted Ms. Murphy is in agreement with what the applicant said about the connection/trail.

Vice-Chair Brown asked to discuss occupancy COA.

Mr. Sharples noted there is 48,000' of commercial being constructed prior to Certificate of Occupancy for 113th unit. Vice-Chair Brown noted the commercial aspect is important. Have seen developments where commercial is never built. This will give them an incentive to build the commercial.

Mr. Grueter noted it is a great idea and asked if any of the 112 units will be workforce housing? Mr. Sharples indicated 25% are to be affordable, 29 of the 112.

Vice-Chair Brown moved that the request of Gateway at Exeter, Planning Board Case #19-16 for Site Plan approval be approved with the conditions as listed. Ms. Belanger seconded the motion. A roll

173 ***call vote was taken Belanger – yes, Cameron – yes, Cowan – yes, English – aye, Grueter – aye, Brown –***
174 ***aye, and Plumer – aye. The motion passed 7-0-0.***

175

176 The Board took a brief recess between 8:25 PM and 8:33 PM.

177

178 4. Continuation of the application of Brian Griset for review of a Yield Plan in conjunction with a
179 proposed 16-unit single-family condominium open space development and associated site
180 improvements on property located off of Tamarind Lane and Cullen Way
181 R-1, Low Density Residential and NP-Neighborhood Professional zoning districts
182 Tax Map Parcel S-#96-15 and #81-53
183 Case #20-2

184

185 Mr. Sharples noted he hasn't received any additional information and we can go over waivers.

186

187 Attorney Justin Pasay indicated he would like to start by discussing the Yield Plan currently. No use of
188 Mendez trust property now. 13 lots on Griset property only. Complies with zoning ordinance. Been
189 reviewed thoroughly. Letter from Attorney Britton dated July 9th argued that despite the deal with the
190 Town the agreement was "illegal." The second was that the proposed lot line adjustment for buffers
191 seeks a partial waiver from buffers. Provided rebuttal to Attorney Britton's letter. Talked about purview
192 of Board. Town Counsel must have provided advice. Seeking approval. Will address two waivers for
193 perimeter buffers and address comments from Steven Keach on two partial requests for 9.6.1.7, one in
194 regards to Lot 5. The second is to permit 95' where 100' is required. The first 50' of buffer must remain
195 untouched. Not envisioned to reduce density. Point is to lessen the impact on neighbors of wetlands.
196 The building envelope outside of 50' buffer on Lot 5. South strip of land owned by railroad.
197 Configuration doesn't warrant 100' buffer. Would be reasonable request to waiver the requirement on
198 Lot 5. Previously proposed lot line adjustment had opposition. Waiver is for about 5' of relief on Lots 8
199 and 9.

200

201 Attorney Pasay noted the closest developable upland is 350' away. This is consistent with underlying
202 regulations. Suggest a reasonable waiver for this portion. Keach's letter has the same arguments as
203 Attorney Britton. Saying we are transferring density from Town property. Hope legal has helped resolve
204 this issue. Find wrong to ask the Planning Board to breach contract and deny Yield Plan. Says Yield Plan
205 relies on lot line adjustment with 8 Tamarind. Use a right-of-way reserved for this exact purpose.
206 Suggest that 25' building envelope is insufficient. Incorrect because that is standard in Exeter. Building
207 envelopes on Yield Plan are significantly bigger. Next is objection to "reverse frontage lots." Complies
208 with zoning ordinance and regulations. Shortened Cullen Way Ext. Less impervious surface. Town
209 doesn't require fully designed road. DPW has said it is reasonable.

210

211 Christian Smith noted an elevation drop of 5% with proposed road. Mr. Griset has been willing to talk to
212 anyone about this. Opposition has taken to unfortunate measures to halt approval. Expecting more
213 from this proposal than others. Grisets want to enjoy benefit of a 30-year agreement with the Town.

214

215 Vice-Chair Brown reminded the Board of its targeted end time of 10 PM.

216

217 Ms. English noted the cul-de-sac and expressed concerns with the elevation drop but the Town Engineer
218 seems okay with it. End of corridors appear to be less than 20' from wetland.

219

220 Mr. Smith indicated the edge of the pavement is 33' from the wetland.

221

222 Ms. English noted she was somewhat confused by the agreement with the Flahertys. Can't tell if there is
223 any difference in plan designs before and after agreement. Is the road further into the wetland now?

224 Also some Swamp White Oaks.

225

226 Attorney Pasay noted he is trying to accommodate the Flahertys. CUP will be required once go to Site
227 Plan Review. For Yield Plan it is reasonably achievable. Intend to preserve those trees.

228

229 Mr. Griset noted the only changes are that maintained White Oak and located entrance 2' further down
230 and at a diagonal. No encroachment where Swamp White Oak is.

231

232 Ms. English noted she was uncomfortable with some of the uncertainties.

233

234 Mr. Steckler noted the precedent set by the Planning Board allows for waivers of Forest, River and
235 Blackford Place Development . Clarify for Yield Plan or Subdivision, does that matter?

236

237 Attorney Pasay noted for actual subdivision. Is a relevant consideration for the Planning Board but go
238 back to notion that the standard purpose of the Yield Plan be achievable.

239

240 Attorney Tim Britton indicated he represents the families in the neighborhood. The Yield Plan is for 13
241 lots. Attorney Britton mentioned his July 9 letter and that the plan depends on transfer of density from
242 the Town for 4-5 lots.

243

244 Attorney Britton noted the Town does not permit a density transfer between lots. The zoning ordinance
245 lacks a provision for density transfer. The August 13, 1999 agreement is not permitted. The Planning
246 Board Chair and Town Manager don't have the authority. It usurps the authority of Town Meeting and
247 renders the 1991 agreement void. This Yield Plan requires an unlawful density transfer. The neighbors
248 are not asking for a break of the agreement just stating the provision is not valid or enforceable. Further
249 Attorney Pasay has not provided a copy of the authority by the BOS in 1991. There has been no
250 response to the Right to Know request dated July 10th that contains any such approval. Even if the BOS
251 had approved, the BOS can't create authority that doesn't exist.

252

253 Attorney Britton referenced Bosonetto v. Richmond, 2012 and Sutton v. Gilford, 2010 noting it is
254 peculiarly suited to judicial rather than administrative treatment or authority of an agency to act. If the
255 Town didn't have the authority that provision is void not the contract.

256

257 Attorney Britton indicated the Yield Plan before you needs to use the development capacity of a lot not
258 owned by the applicant. The Town doesn't have the right to transfer density rights.

259

260 Attorney Britton noted the 1991 agreement may have reserved the right for the applicant to use the
261 density of the property if and when that legislation was adopted. That never occurred. It has been 16
262 years since 2004 and no amendment to the zoning ordinance was proposed or passed. Attorney Britton
263 requested the Board reject the Yield Plan presented by the applicant.

264
265 Attorney Britton indicated it is odd that the Yield Plan presented depends on waivers and affects
266 whether the Yield Plan is reasonably achievable.

267
268 Mr. Flaherty of 8 Tamarind Lane indicated there is a lot going on at the entrance way. The lot line
269 adjustment is to not have a private road running through their property.

270
271 Mr. Keach noted he has been asked by the neighborhood to review the Yield Plan and read the portion
272 of the zoning ordinance that relates to open space development. The density portion is straightforward.

273
274 Mr. Keach noted the plan calls for 13 lots on a 26.4-acre tract. His concerns were addressed in his July 8
275 report. Mr. Keach noted Christian Smith is a fine engineer and he didn't find a lot of engineering
276 concerns.

277
278 Mr. Keach asked the Board to consider if the Yield Plan was put forth before them as a definitive plan
279 would they approve it and stated that he suspects not. Something is missing. Attorney Britton worded
280 it well. One fundamental item is the Tamarind lot-line adjustment. The Yield Plan shows a 75' easement
281 over the parcel. The Town takes the land under it in fee simple. Mr. Sharples noted the Town is not
282 going to take it. It is staying private.

283
284 Mr. Keach asked if this would leave sufficient frontage for 8 Tamarind Lane? The building envelope is
285 625 sq.ft and most in the area are double that size. There were no standards published that he could
286 find. There is double frontage, reverse frontage and scant frontage.

287
288 Mr. Keach noted the road geometry and the Public Work's right to grant departures from that. Section
289 7.7.1 of the ordinance states density should be achieved on its own permits and don't believe there
290 should be 13 single-family homes with portions encroaching on the flood area. There is a reason this
291 parcel is a remnant left over when other parcels were developed.

292
293 ***Mr. Cameron motioned to table Planning Board Case #20-2 to September 10, 2020 at 7:00 PM. Ms.***
294 ***Belanger seconded the motion. A roll call vote was taken Cameron – aye, Belanger – aye, Brown –***
295 ***aye, English – aye, Grueter – aye, Cowan – aye and Plumer – aye. The motion passed 7-0-0.***

296
297 **V. OTHER BUSINESS**

- 298
299 1. W Scott Carlisle – Case #17-26
300 Request for extension of a conditional approval for minor subdivision (off Epping Road)
301 Tax Map Parcel #40-12
302

303 Chair Plumer noted the Board would keep the Carlisle case on the next agenda at 6:30 PM.

304
305 Vice-Chair Brown noted this is the third request. Mr. Sharples noted extensions are decided on a case
306 by case basis, but the applicant could be brought in to discuss the request.

307
308 Mr. Cameron noted he was uncomfortable with there being a third request without discussion. Ms.
309 English noted she feels the same way.

310
311 *Ms. Belanger motioned to continue Case #17-26 request for an extension of conditional approval for*
312 *W. Scott Carlisle to September 10, 2020 at 6:30 PM to invite the applicant to attend. Mr. Cameron*
313 *seconded the motion. A roll call vote was taken Cameron – aye, Grueter – aye, Cowan – aye, Belanger*
314 *– aye, Brown – aye, English – aye and Plumer – aye. The motion passed 7-0-0.*

315
316 Ms. English asked if there were any change in the regulations that would impact this? Mr. Sharples
317 indicated he will research that question and answer it on September 10, 2020.

318

319 **VI. TOWN PLANNER'S ITEMS**

320 **Field Modifications**

321 **Announcements**

322 **VII. CHAIRPERSON'S ITEMS**

323 Chair Plumer indicated the next meeting would be September 10, 2020 at 6:30 PM.

324 Ms. Belanger noted the CIP 2nd public hearing is also on September 10th. Vice-Chair Brown noted he
325 would rather start at 6:30 PM and end by 10:00 PM than go onto 11:00. Mr. Steckler noted he would
326 rather start at 6:30 PM and end at 9:30 PM.

327

328 Chair Plumer noted the CIP and Carlisle extension could be heard at 6:30 PM as they won't take very
329 long.

330

331 **VIII. PB REPRESENTATIVE'S REPORT ON "OTHER COMMITTEE ACTIVITY"**

332 **IX. ADJOURN**

333 Chair Plumer adjourned the meeting at 10:04 PM.

334

335 Respectfully submitted,

336 Daniel Hoijer,
337 Recording Secretary