

DURHAM PLANNING BOARD
REGULAR MEETING AGENDA
Durham Town Offices, 6:30 p.m.
April 5, 2023

NOTE: No public comment will be taken on individual applications at the meeting unless the Board schedules a formal public hearing with required notice posted. Comments on applications can be submitted in writing to the Town Planner and will be forwarded to the Planning Board and the applicants.

1. Roll Call & Determination of a Quorum
2. Amendments to the Agenda
3. Acceptance of the Minutes of Prior Meetings (March 1, 2023)
4. Informational Exchange on Non-Agenda Items:
 - a) Town Officials
 - b) Residents (Public comment will be taken)
 - c) Non-Residents (Public comment will be taken)
5. Continuing Business
 - a) Substantive Review of Final Plan Application for the Deer Creek Crossing Subdivision Map 7, Lot 32A (Public comment will not be taken)
6. Other Business:
 - a) Board Discussion of Draft Land Use Ordinance Amendments (Public comment will not be taken)

3. Acceptance of the Minutes of Prior Meetings (March 1, 2023)



Town Of Durham

Planning Board Minutes

Town Offices, 6:30 pm
March 1, 2023

1. Roll Call & Determination of a Quorum

In attendance: John Talbot (Chair), Juliet Caplinger (Vice Chair), Allan Purinton, Ron Williams and George Thebarger (Town Planner).

Absent: Anne Torregrossa and Tyler Hutchison

Guests: Charles Burnham (Applicant: Deer Creek)
Kevin Nadeau (Selectboard Chair)
Joseph Roy (Conservation Commission)

2. Amendments to the Agenda: None

3. Acceptance of the Minutes of prior meeting (January 4, 2023)

Allan Purinton moved to accept the minutes from the January 4, 2023 meeting as presented. Juliet Caplinger seconded. Motion carried 4-0.

4. Informational Exchange on Non-Agenda Items:

a.) Town Officials

- John Talbot and the Town Planner met with the Selectmen and presented them with the Planning Board's recommendations on the Land Use Amendments. The Selectboard requested a change to Part 1B.
- George Thebarger announced that the new GIS Mapping system is fully operational on the town's website. Any errors will be addressed when the system goes through the next updating process. (Current update reflects parcel changes through April 2022, next update will include changes through April 2023).

b.) Residents – Heather Roy/Hallowell Road asked for clarification of the participation by members of the Select Board in discussions of the Land Use Ordinance amendments.

c.) Non-residents – None

5. Continuing Business

a.) Completeness Review of Final Plan for the Deer Creek Crossing Subdivision Map 7, Lot 32A (Public comment will not be taken)

- The Planning Board deemed the application incomplete as of November 2, 2022 until the State Agencies reviews are available. (DEP stormwater management permit, MaineDOT road entrance permit, and the Army Corps of Engineers review of the stream crossing.
- The Applicant has sent an updated plan.
- As of March 1, 2023, the Applicant is still waiting on the Army Corps of Engineers permit.

John Talbot moved that the Planning Board accept the application as substantially complete with the condition that the Board see the Army Corps Plan before giving final plan approval. Allan Purinton seconded. Motion carried 3-1.

The Town Planner has identified five main issues for the Planning Board to address along with the detailed review of all of the Ordinance criteria and standards set forth in the draft findings:

1. Stream Crossing – The Board indicated in the preliminary plan approval that it would rely on State and Federal reviews as to environmental impacts.
2. Fire Pond – Fire Chief is concerned with drought conditions and whether there will be water in the fire pond when needed.
3. Storm Water Treatment Basin – No easement is not on the survey plan.
4. Conditional Agreement – A restriction on lot sales and building permits in lieu of a financial performance guarantee (except for erosion controls).
5. Complete Packet for the Final Plan – The Board needs a complete, up-to-date plan set with supporting documentation on which to base its final decision.

The Board discussed a sixth issue: DEP stormwater permit.

The applicant will address the storm water easement at the next Planning Board meeting. The applicant believes that the clay-lined fire pond should help to keep the pond from drought conditions. The applicant agrees with the Board that a complete and updated packet is necessary for the final plan approval. The Board will consider the conditional agreement and the stream crossing when the Army Corps sends in their review.

The Board asked the Town Planner to check with the engineering peer reviewer to ensure that all their comments have been addressed.

6. Other Business:**a.) Board Discussion of Draft Land Use Ordinance Amendments (Public comment will not be taken)**

- A public hearing was conducted on February 15, 2023 at the Eureka Center.
- The Planning Board decided to drop the articles on affordable housing (Parts 2A & 2B) due to the unfinished rules still be processed at the State level.
- The Planning Board has added an additional public hearing on March 22, 2023 at the Eureka Center to give the public opportunity to ask questions about the articles they will be voting on at Town Meeting.
- The Town Office sent out 480 letters to affected landowners affected by the proposed changes to Resource Protection.

Joe Roy (Conservation Commission) discussed his concerns with Part 1B and recommended only presenting Part 1A on the Warrant. (Part 1A fully implements recommendations for Resource Protection in the 2018 Comprehensive Plan and Part 1B only applies changes where Resource Protection already exists.)

Kevin Nadeau (Select Board) also expressed concerns with adopting the new criteria for Resource Protection in Part 1B if voters reject those same criteria in Part 1A. The goal to fix the current District inaccuracies could fail due to confusion over the proposal.

Juliet Caplinger moved to recommend to the Select Board keeping Part 1A – (will change to Part 1) and removing Part 1B from the warrant. Allan Purinton seconded, motion carried 3 – 1.

7. Adjourn: The meeting adjourned at 9:09 pm.

Ron Williams moved to adjourn; Juliet Caplinger seconded. Motion carried 4 – 0.

5. Continuing Business:

a. Substantive Review of Final Plan Application for the Deer Creek Crossing Subdivision Map 7, Lot 32A.

TOWN PLANNER COMMENTS:

- The Town's peer review engineer (Will Haskell of Gorrill-Palmer Associates) has indicated that the applicant has satisfied all the peer review comments, including the hydraulic calculations for the fire pond.
- Stream Crossing – The Board indicated in the preliminary plan approval process that it would rely on State and Federal reviews as to environmental impacts for the new road that will cross the stream. The final plan and State reviews should address removal of the existing road crossing that is damming up the stream with an undersized culvert. The peer reviewer made note of State and Federal rules on the allowable period of construction around the stream bed (lowest water).
- Fire Pond – The Fire Chief has indicated acceptance of the proposed water supply for fire protection service, including review of the hydrological supply analysis and proposed hydrant fixture..
- Storm Water Treatment Basin – No easement was shown on the survey plan for the property to be retained by Dean Smith.
- Conditional Agreement – The applicant is requesting a restriction on lot sales and building permits in lieu of a financial performance guarantee (except for erosion controls). If approved, this condition should be indicated on the final plan.
- Complete Packet for the Final Plan – The Board needs a complete, up-to-date plan set with supporting documentation on which to base its final decision.
- DEP Stormwater Permit – In addition to the stream crossing, State approval of a stormwater management plan is required for development and disturbance over certain thresholds. In the initial stages of the project review, the applicant asserted that the triggers were not hit due to existing disturbance conditions on the site. They have since addressed this issue in their plans and the peer reviewer is satisfied that the plans meet the Durham standards, which are the same as DEP.
- The subdivision recording plan dated October 17, 2022 does not include an easement for the proposed stormwater treatment area on the land to be retained by Dean Smith, therefore the Homeowners Association will lack legal right to enter the property to do required maintenance of the underdrain treatment system.
- That subdivision recording plan does include an easement for the fire pond indicating that the easement is to be conveyed to the Town of Durham (Section

6.16.C.4). The Homeowner's Association is fully responsible for maintaining both the stormwater treatment and fire protection water supply systems (as well as the road and open space), and all final plan documents should clearly indicate that responsibility and authority. The access easement gives the Town authority to access the pond and take corrective action in cases of failure of the Homeowner Association to maintain the pond in working order.

- The Town Planner has prepared draft of findings and approval conditions based on the preliminary plan approval, the submissions, peer review, and checklist for Board processing of the application.
- The Board can vote to add, delete, or modify any of the draft findings and approval conditions.
- To grant approval, a Board majority must make findings that the applicant has met the burden of proof of compliance with each subdivision criterion and standard.
- The Board can apply approval conditions necessary to assure compliance and should seek applicant input on acceptance of such proposed conditions of approval.
- If a Board majority finds that the applicant has not met the burden of proof of compliance with one or more of the criteria and standards, it should adopt such findings to serve as the basis for denial.

****AT THE TIME OF POSTING THE AGENDA PACKET, THE
APPLICANT HAS NOT PROVIDED ANY UPDATED SUBMISSIONS****



TOWN OF DURHAM
630 Hallowell Road
Durham, Maine 04222

***Office of Code Enforcement
and Planning***

Tel. (207) 353-2561
Fax: (207) 353-5367

PRELIMINARY SUBDIVISION APPROVAL

Deer Creek Crossing Subdivision

Conditions of Approval

1. Per Section 6.6.C, the Planning Board will request technical peer review of the following submissions:
 - a. Determination of the need or lack thereof for a high intensity soil survey to confirm the wetland delineation and engineering designs;
 - b. Recommendation on the optimum location of the proposed stormwater detention basin with respect to the stream and associated wetlands;
 - c. Review of the engineering designs for road construction, utilities, stormwater management, erosion & sedimentation controls, and the proposed fire pond; and,
 - d. Review of the engineer's construction cost estimates for the project infrastructure.
2. Per Section 6.6.L.1., the applicant shall make the following changes to the preliminary plan as directed by the Planning Board decision:
 - a. A right of way shall be extended from the turnaround to the southwest tract boundary for future road connection; and,
 - b. A fire pond meeting the requirements of Section 6.16.C shall be constructed near the road turnaround but outside of the proposed road right of way extension.
3. Per Section 6.6.L.3., the Board considers that the engineer's construction estimates and performance guarantee for the project will include the following common improvements:
 - a. Access road construction;
 - b. Electrical service;
 - c. Stormwater management system;
 - d. Erosion and sedimentation control system; and,
 - e. Fire protection system.
4. Per Section 6.7.C.3. the applicant submitted a certified boundary survey showing all existing easements. That survey clearly indicated the areas of questionable title and calculation of the area that should be deducted from the proposed open space due to questionable title. The Board granted a waiver of the preliminary plan submission requirements to allow the applicant to place monuments on the corners of the subject parcel dividing Lot 32A from Lot 32L of Tax Map 7 after final approval when the monuments are set for the individual lots.
5. Per Section 6.7.E., to address concerns raised at the public hearing and in written comments, the applicant shall provide the following additional information with the final plan as required by Planning Board to verify compliance with the subdivision standards:

- a. Survey Accuracy – See draft approval condition #4 above.
 - b. Drainage Concerns – Engineering peer review of the stormwater and erosion control plans
 - c. Location of Stormwater Basin – See draft approval condition #1.c above.
 - d. Sensitivity of Stream Crossings – DEP & ACOE permits for stream restoration and new stream crossing.
 - e. Concern for Impacts on Aquifer – Review by the Durham Code Officer of standards applicable to portions of project in the Aquifer District boundary.
 - f. Concern for Continuing Zoning Violations – Review by the Durham Code Officer for zoning violations.
6. Per Section 6.8.A. the final plans shall be submitted within six (6) months of preliminary plan approval and shall be consistent with the preliminary plan except for changes required by the Planning Board or outside reviewing agencies (such changes will be reviewed per the subdivision review criteria & standards). Failure to submit a final plan application within six (6) months shall require resubmission & re-review of the preliminary plan. Prior to expiration of the preliminary plan approval, the applicant may request an extension accompanied by explanation of the causes for delay, documentation of progress made in fulfilling the preliminary plan approval conditions, and confirmation that the Land Use Ordinance has not been amended such that changes affect the project approval.
7. Per Section 6.17.A & B., an erosion and sedimentation plan meeting the requirements of Appendix 2 shall be submitted with the final plans.
8. Per Section 6.17.C., areas intended for vegetation clearing shall be shown on the final plan plans to support the stormwater management plan assumptions and required buffers along water bodies shown on the recording plan and referenced in the plan notes.
9. Per Section 6.18.B.1 & 2., the final plan application shall include required MDOT permits. The applicant shall ask MDOT to address the safety of the intersection offset from Patriot Way.
10. Per Section 6.18.C.2., the applicant shall obtain and submit with the final plan written approval for the street name and all other requirements of Article 13. by the Durham Street Addressing Officer.
11. Per Section 6.18.D.2., the final plans shall include engineered drawings of the road meeting the requirements of Appendix 1.
12. Per Section 6.21.A.1 & 2., the final plan shall delineate and note the limits of tree clearing.
13. Per Section 6.21.B.1., the applicant shall seek consultation with the Maine Department of Conservation, Agriculture, and Forestry's Maine Natural Areas program for information on rare and exemplary botanical features in the project area and shall provide any response from the Department with the final plan application.
14. Per Section 6.21.B.2., the applicant shall seek consultation with the Maine Historic Preservation Commission for information on any historic or prehistoric resources in the project area and shall provide any response from the Commission with the final plan application.
15. Per Section 6.21.C., the applicant shall seek consultation with the Maine Department of Inland, Fisheries, and Wildlife for information on habitat for species appearing on the official state or

federal lists of endangered or threatened species in the project area and shall provide any response from the Department with the final plan application.

16. Per Section 6.21.D., the final recording plan notes and the deeds shall include notice of the clearing restrictions for lots including areas covered by shoreland zoning or resource protection.
17. Per Section 6.23.A. and 6.34.A, the applicant shall submit an engineer's construction cost estimate to cover the full costs of all required improvements, including roads, utilities, stormwater management, fire protection water supplies, and erosion and sedimentation controls along with a letter of commitment from a lending institution referencing said engineer's cost estimates.
18. Per Section 6.28.B., the final plans shall include the DEP stormwater permit and shall be consistent with requirements of that permit.
19. Per Section 6.32.D. the final plans shall include copies of covenants, articles of incorporation, and homeowner association bylaws using the template prepared by the Town Attorney or a version reviewed and approved by the Town Attorney at the applicant's expense.
20. Per Section 6.33.B.8, the applicant shall provide detailed grading plans for the building sites on Lots 6 and 7 which shall become part of the final subdivision approval conditions that can be amended with further subdivision review.
21. Per Section 6.34.B., the final plan application shall include the proposed form and amount of the performance guarantee needed to cover the costs of all improvements noted in COA #17 above, which can be a cash deposit or irrevocable letter of credit in a form satisfactory to the Town Attorney (template provided). Any other proposed performance guarantee must be reviewed by the Town Attorney at the applicant's expense.



TOWN OF DURHAM
630 Hallowell Road
Durham, Maine 04222

**Office of Code Enforcement
and Planning**

Tel. (207) 376-6558
Fax: (207) 353-5367

SUBDIVISION APPROVAL DECISION

FINDING OF FACTS

PROJECT NAME: _____ Deer Creek Crossing _____

A. PROJECT DESCRIPTION

The application is for a thirteen-lot cluster subdivision off Hallowell Road. There is an existing gravel road that runs across the site. The southern end of the property has a very defined stream running along it. The stream will need to be crossed to access the site. The proposed subdivision is a clustered layout with each lot being at least 45,000 square feet per the allowance for lot-size and frontage regulations for cluster subdivisions.

The open space wraps around the perimeter of the site and includes the areas along the stream. A trail looping around the open space will provide recreational opportunities (hiking, cross country skiing, the observation of wildlife etc.). The open space protects important natural features (streams, hills, forested wetlands, existing rock walls etc.) from the adverse impacts of development. The cluster subdivision will put over 50% of the property into “open space” that belongs to the Homeowner’s Association. The “open space” consists of large dry wooded areas along with the stream around the perimeter of the site.

The subdivision will be served by a 2400 linear-foot private road with a hammerhead turnaround. A dedicated right of way will be extended from the road turnaround to the project boundary for future street interconnection. The lots will be served by individual wells and septic systems. Utilities will be placed underground. A fire pond with dry hydrant will be provided as a water supply for fire protection.

B. PROJECT PLAN SUBMISSIONS

1. Deer Creek Crossing Final Subdivision Plan dated October 17, 2022, prepared by Cornerstone Professional Land Surveying Inc.
2. Sheet C-100 Existing Conditions Plan dated October 19, 2022, revised November 22, 2022, prepared by Grange Engineering LLC.
3. Sheet C-101 Overall Site Layout Plan dated October 19, 2022, revised November 22, 2022, prepared by Grange Engineering LLC.

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4. Sheet C-102 Grading and Erosion Control Plan dated October 19, 2022, revised February 22, 2023, prepared by Grange Engineering LLC.
5. Sheet C-200 Plan and Profile dated May 18, 2022, revised February 22, 2023, prepared by Grange Engineering LLC.
6. Sheet C-201 Plan and Profile dated October 19, 2022, revised February 22, 2023, prepared by Grange Engineering LLC.
7. Sheet C-300 Erosion Control Notes dated October 19, 2022, prepared by Grange Engineering LLC.
8. Sheet C-302 Civil Details 2 dated October 19, 2022, revised November 22, 2022, prepared by Grange Engineering LLC.
9. Sheet C-303 Civil Details 3 dated October 19, 2022, revised February 22, 2023, prepared by Grange Engineering LLC.
10. Sheet C-304 Fire Pond Details dated October 19, 2022, revised November 22, 2022, prepared by Grange Engineering LLC.
11. Sheet C-305 Stream Crossing Details dated October 19, 2022, revised February 22, 2023, prepared by Grange Engineering LLC.
12. Sheet D-100 Existing Stormwater Plan dated October 19, 2022, prepared by Grange Engineering LLC.
13. Sheet D-100 Proposed Stormwater Plan dated October 19, 2022, prepared by Grange Engineering LLC.
14. The Simple Erosion and Sediment Control Plan for Small Sites (House lots) from the DEP Erosion Control Manual.
15. Figure 1 – Lot 6 and Lot 7 Layout dated October 13, 2022, prepared by Grange Engineering, LLC.

C. SUBDIVISION REVIEW CRITERIA

Section 6.2 SUBDIVISION REVIEW CRITERIA

- A. When reviewing any application for a subdivision, the Planning Board shall find that the following criteria as found in 30-A M.R.S.A. §4404 as well as all applicable provisions of this Land Use Ordinance have been met before granting approval. The proposed project:
1. **Pollution:** Will not result in undue water or air pollution. In making this determination, the Planning Board shall at least consider:
 - a. The elevation of the land above sea level and its relation to the flood plains;
 - b. The nature of soils and subsoils and their ability to adequately support waste disposal;
 - c. The slope of the land and its effect on effluents;
 - d. The availability of streams for disposal of effluents; and,
 - e. The applicable State and local health and water resources rules and regulations;

Motion made by _____: The proposed subdivision project will not result in undue water or air pollution. In making this determination, the Board has considered the five adopted criteria for pollution, and the applicant has submitted evidence and testimony of compliance with the performance standards for elevation of land and relation to floodplain management contained in Section 6.25, for soils and wastewater disposal in Section 6.19, for

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slope of land and effects on effluents through erosion control plans and stormwater management under Section 6.17 and 6.28, and for state and local health rules under Sections 6.16 for water supply, 6.19 for sewage disposal, and 6.24 for impact on groundwater quality.

Motion seconded by _____:

Votes to approve: _____ Votes to deny: _____

2. **Sufficient Water:** Has sufficient water available for the reasonably foreseeable needs of the subdivision;

Motion made by _____: The proposed subdivision will be served by individual wells per the requirements of Section 6.16.A and B., and the proposed fire protection water supply has been reviewed and approved by the Fire Chief per the requirements of Section 6.16.C.

Motion seconded by _____:

Votes to approve: _____ Votes to deny: _____

3. **Erosion:** Will not cause unreasonable soil erosion or reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results;

Motion made by _____: The proposed subdivision will prevent soil erosion and sedimentation through the procedures outlined in the erosion and sedimentation control plan meeting the requirements of Appendix 2 as determined by the Town's peer review engineer. Topsoil will be retained and used on site.

Motion seconded by _____:

Votes to approve: _____ Votes to deny: _____

4. **Traffic:** Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed and, if the proposed subdivision requires driveways or entrances onto a state or state aid highway, located outside the urban compact area of an urban compact municipality, the Department of Transportation has provided documentation indicating that the driveways or entrances conform to 23 M.R.S.A. §704 and any rules adopted under that section;

Motion made by _____: The proposed subdivision will not create unreasonable highway or public road congestion or unsafe conditions. Sight distances on Hallowell Road are adequate, and the slight intersection offset with Patriot Way does not constitute a safety hazard. The roadway serving the subdivision has adequate capacity to serve the anticipated levels of traffic and all road construction will meet the engineering standards of Appendix 1 as determined by the Town's peer review engineer.

Motion seconded by _____:

Votes to approve: _____ Votes to deny: _____

5. **Sewage Disposal:** Will provide for adequate sewage waste disposal;

Motion made by _____: The proposed subdivision will provide for adequate sewage waste disposal. Soil test pits have been submitted to document that each lot

Subdivision Approval Findings of Fact – Project Name Deer Creek Crossing

will have a septic system location that meets Maine wastewater disposal rules without the need for a variance or off-site easement.

Motion seconded by _____ :

Votes to approve: _____ **Votes to deny:** _____

6. **Municipal Solid Waste Disposal:** Will not cause an unreasonable burden on the municipality's ability to dispose of solid waste if municipal services are to be utilized;

Motion made by _____ : Solid waste generated by the proposed subdivision can be accommodated within the capacity of the Town's current solid waste disposal services.

Motion seconded by _____ :

Votes to approve: _____ **Votes to deny:** _____

7. **Aesthetic, Cultural, and Natural Values:** Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;

Motion made by _____ : The project will not have undue adverse effects on aesthetic, cultural, and natural values. The project limits clearing of trees to those areas designated on the plan and maintains a 50-foot vegetative buffer along existing roadways. The applicant has consulted with State agencies on historic resources, significant wildlife habitat, and unique natural areas, and available data indicates the absence of such natural and cultural resources on or adjacent to the project site.

Motion seconded by _____ :

Votes to approve: _____ **Votes to deny:** _____

8. **Conformity with Local Ordinances and Plans:** Is in conformance with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the Planning Board may interpret these ordinances and plans;

Motion made by _____ : The proposed subdivision is in conformance with requirements of the Land Use Ordinance, which is consistent with the Comprehensive Plan. The Code Enforcement Officer has conducted inspections of the project site and determined that there are no current violations of the Land Use Ordinance and that standards of the Aquifer Protection District will be met with the proposed road construction.

Motion seconded by _____ :

Votes to approve: _____ **Votes to deny:** _____

9. **Financial and Technical Capacity:** The developer has adequate financial and technical capacity to meet the standards of this Article;

Motion made by _____ : The applicant has demonstrated financial capacity under Section 6.23.A. by submitting engineering cost estimates for required improvements. A conditional agreement per Section 6.34.C. will require the completion of all

Subdivision Approval Findings of Fact – Project Name Deer Creek Crossing

project infrastructure prior to sale of lots or issuance of building permits until a performance guarantee is approved by the Board. The applicant has demonstrated adequate technical capacity under Section 6.23.B. through the submission of technical drawings and studies that have been peer reviewed, and through the provision of an inspection escrow fund to verify satisfactory completion of the project improvements, which is a condition of final approval.

Motion seconded by _____:

Votes to approve: _____ Votes to deny: _____

10. **Surface Waters:** Whenever situated entirely or partially within the watershed of any pond or lake or within two hundred and fifty (250') feet of any wetland, great pond or river as defined in 38 M.R.S.A. §§ 435-490, will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water;

Motion made by _____: The proposed subdivision is not located within the watershed of Runaround Pond and is not located on property subject to mandatory shoreland zoning. Construction of the new stream crossing and removal of the existing stream crossing have been approved by the Maine Department of Environmental Protection and Army Corps of Engineers. The stormwater treatment facilities have been moved away from the stream in accordance with DEP standards.

Motion seconded by _____:

Votes to approve: _____ Votes to deny: _____

11. **Groundwater:** Will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water;

Motion made by _____: Septic systems will be required to meet the Maine subsurface wastewater disposal rules and wells will be required to meet State rules for well drilling, including the well exclusion zones on each lot as shown on the subdivision plan. There are no documented problems with obtaining an adequate supply of potable water in the project area, and the density of the proposed development and projected household water consumption do not raise concerns for the effect of ground water withdrawals.

Motion seconded by _____:

Votes to approve: _____ Votes to deny: _____

12. **Flood Areas:** Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant determine whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the applicant shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision or project plan must include a condition of plan approval prohibiting the construction of any dwellings or other structures except for access roads and essential utilities within the 100-year floodplain;

Motion made by _____: No development is proposed within areas mapped as being flood-prone.

Motion seconded by _____:

Subdivision Approval Findings of Fact – Project Name Deer Creek Crossing

Votes to approve: ____ **Votes to deny:** ____

13. **Fresh Water Wetlands:** All freshwater wetlands within the proposed subdivision have been identified on maps submitted as part of the application, regardless of the size of these wetlands;

Motion made by ____: All freshwater wetlands within the proposed subdivision have been mapped by qualified professionals.

Motion seconded by ____:

Votes to approve: ____ **Votes to deny:** ____

14. **Farmland:** All farmland of five (5) or more acres that is in active farm production or consisting of five (5) or more acres of prime farmland soil or soil classified as unique farmland or farmland of State or local importance has been identified on maps submitted as part of the application;

Motion made by ____: There is no active farmland nor prime farmland of five or more acres within the project site.

Motion seconded by ____:

Votes to approve: ____ **Votes to deny:** ____

15. **River, Stream, or Brook:** Any river, stream or brook within or abutting the proposed subdivision has been identified on maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S.A. §480-B.9;

Motion made by ____: All streams meeting the definition of a regulated stream under the Natural Resources Protection Act have been identified on maps by the applicant and appropriate stream buffers are shown on the subdivision plan.

Motion seconded by ____:

Votes to approve: ____ **Votes to deny:** ____

16. **Storm Water:** The proposed subdivision will provide for adequate storm water management;

Motion made by ____: Per Section 5.28.B., the applicant has submitted a stormwater management plan meeting the requirements of DEP regulations and that stormwater management plan has been peer reviewed.

Motion seconded by ____:

Votes to approve: ____ **Votes to deny:** ____

17. **Spaghetti-Lots Prohibited:** If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond as these features are defined in 38 M.R.S.A. §480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than five (5:1) to one;

Motion made by ____: No lots are proposed within an area regulated by Mandatory Shoreland Zoning that would violate the "spaghetti-lot" rule.

Motion seconded by ____:

Subdivision Approval Findings of Fact – Project Name __Deer Creek Crossing_____

Votes to approve: ____ **Votes to deny:** ____

18. **Great Pond Phosphorus Concentration:** The long-term cumulative effects of the proposed subdivision will not unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision;

Motion made by _____: The project site is not located within the watershed of Runaround Pond.

Motion seconded by _____:

Votes to approve: ____ **Votes to deny:** ____

19. **Impact on Adjoining Municipalities:** For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.

Motion made by _____: The proposed residential subdivision will not generate levels of traffic that would cause unreasonable traffic congestion within Durham or any adjacent municipality.

Motion seconded by _____:

Votes to approve: ____ **Votes to deny:** ____

20. **Land Subject to Liquidation Harvesting:** Timber on the tract being subdivided has not been harvested in violation of rules adopted pursuant to 12 M.R.S.A §8869.14.

Motion made by _____: The applicant has submitted certification by a licensed forester that timber harvesting on the site was conducted in compliance with Maine forestry management rules.

Motion seconded by _____:

Votes to approve: ____ **Votes to deny:** ____

D. CLUSTER SUBDIVISION APPROVAL

Section 6.33 CLUSTER DEVELOPMENT ALTERNATIVE

- A. **Purpose of Clustering:** The purpose of these provisions is to allow for flexibility in the design of subdivisions to allow for the creation of open space which provides recreational opportunities or protects important natural features from the adverse impacts of development, provided that the net residential density shall be no greater than is permitted in the district in which the development is proposed. Notwithstanding provisions of Article 4 relating to dimensional requirements, the Board, in reviewing and approving proposed residential subdivisions, may modify the provisions related to dimensional requirements to permit flexibility in approaches to housing and environmental design in accordance with the following guidelines. This shall not be construed as granting variances to relieve hardship, and action of the Zoning Board of Appeals shall not be required.

Subdivision Approval Findings of Fact – Project Name __Deer Creek Crossing_____

Motion made by _____: The proposed subdivision meets the intent of clustering lots to allow for creation of open space, to provide recreational opportunities, and to protect important natural features and complies with the density limitations and design standards for cluster developments of Section 6.33 B.

Motion seconded by _____:

Votes to approve: _____ Votes to deny: _____

E. CONDITIONS OF APPROVAL & DECISION

Section 6.8. FINAL PLAN APPLICATION PHASE

- J. **Decision on Final Plan Application:** Within thirty (30) days from the public hearing or within sixty (60) days of determining a complete application has been received, if no hearing is held, or within another time limit as may be otherwise mutually agreed to by the Board and the applicant, the Board shall make findings of fact, and conclusions relative to the criteria for approval contained in 30-A M.R.S.A., §4404 and the standards of these regulations. If the Board by majority vote finds that all the criteria of the statute and the standards of these regulations have been met, they shall approve the final plan. If by majority vote the Board finds that any of the individual criteria of the statute or the performance standards of these regulations have not been met, the Board shall either deny the application or approve the application with conditions to ensure all of the standards will be met by the subdivision. The reasons for any conditions shall be stated in the records of the Board.

Motion made by _____: To approve the final subdivision application with the following conditions of approval.

Motion seconded by _____:

Votes to approve: _____ Votes to deny: _____

1. Per Section 6.10.E., the recording plan must be recorded in the Androscoggin County Registry of Deeds within ninety (90) days of the Planning Board signing. Failure to record within that time frame will require resubmission and reapproval of the final plan.
2. Per Section 6.10.G., no changes, erasures, modifications, or revisions shall be made unless an amended plan is submitted per the terms of Section 6.11.
3. Per Section 6.10.I., the applicant shall commence construction of the required improvements within twelve (12) months and shall substantially complete said improvements within thirty-six (36) months. The applicant shall maintain a performance guarantee for any remaining required improvements throughout the construction period.
4. Per Section 12.A., at least five (5) days prior to the start of construction the applicant shall notify the Road Commissioner in writing of the time of construction commencement so the Town can arrange for inspections by a qualified engineer.
5. Per Section 6.34.C., the Planning Board approves a conditional agreement that requires the completion of all project infrastructure prior to sale of lots or issuance of building permits. The applicant may return to the Planning Board at any point in the construction

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to seek approval of a performance guarantee for remaining improvements to allow lot sales and building permit issuance. A performance guarantee shall be submitted for the full cost of erosion and sedimentation controls and site stabilization. Per Section 6.34.F., prior to release of the performance guarantee or any portion thereof, the Road Commissioner or their designee shall determine and provide written certification to the Planning Board that all improvements have been constructed in conformance with the final plan and all applicable codes and ordinances. Partial drawdowns will be allowed.

6. Per Section 6.34.B., no lot in the subdivision may be sold, leased, or otherwise conveyed until the street leading up to and along the frontage of said lot is constructed unless a performance guarantee has been approved and the Fire Chief has provided written verification that said road and lot are accessible by emergency vehicles.
7. Per Section 6.6.C. and 6.34.E., prior to release of the recording plan, the applicant shall replenish the peer review escrow fund to cover the costs of all peer review services incurred by the Town and deposit a check for two (2%) percent of the engineer's construction cost estimate to pay for the cost of Town inspections of the project improvements by a qualified engineer.
8. Prior to the issuance of any certificate of occupancy, the proposed trail shall be fully constructed.
9. The Planning Board approval of Deer Creek Crossing Subdivision is contingent upon the adoption of and compliance with the draft Homeowner Association legal documents submitted by the applicant on November 22, 2022 (Attachment H).

DATE OF FINAL APPROVAL:

6. Other Business

a. Board Discussion of Draft Land Use Ordinance Amendments

- A Town Meeting vote on draft amendments to align the Resource Protection District with recommended criteria from the 2018 Comprehensive Plan will be held on April 1.
- If the amendments pass, approximately 320 property owners will see reduction in the amount of Resource Protection based on updated floodplain mapping.
- Approximately 160 property owners will see added restrictions based on updated floodplain mapping, IF&W's mapping of higher value large wetlands and waterfowl habitats, and addition of Beginning with Habitat 6+ cooccurrence of natural resource values.
- Whether the amendments pass or fail, the Town could consider a policy to carve out existing, developed portions of lots from the Resource Protection District.
- This would eliminate the need for property owners to apply to the Boards for special approval of residential expansions and would allow expansions of existing businesses within those developed areas subject to standard conditional use reviews.
- If the amendments fail, this revised approach could be crucial to future consideration of amendments to implement Comprehensive Plan recommendations for protecting Durham's natural resources.
- Another issue that has raised the most objections has been the use of the Beginning with Habitat 6+ criterion. The adopted Comprehensive Plan recommends consideration of mandatory clustering of subdivisions in those areas as an alternative to Resource Protection zoning. That concept could also be explored to address the areas designated as 4+ in the Comprehensive Plan (e.g., open farm fields).
- The Maine Department of Economic and Community Development is slated to complete their enactment of rules municipalities must follow on affordable housing/density regulations by the end of April.
- During the public participation process over the past year, the Planning Board explored two different approaches to complying with the new State law.
- The first option was to follow the Comprehensive Plan recommendations by allowing up to three housing units per 2-acre lot but restricting the added units to accessory apartments.
- The second option was to allow the added units to be full-sized but to require 2 acres of land per housing unit as allowed by the new law.
- The draft rules prohibit restrictions based on housing unit sizes, indicating that the first option would not meet state requirements.

- A hybrid approach that might pass muster would be to allow the smaller accessory units on a 2-acre lot but to require larger lots with full-sized units.
- If the Town doesn't adopt specific standards the Code Officer will follow the State law when it goes into effect on July 1, 2023, which will allow up to three full-sized housing units on a 2.5 acre lot.
- The Town Manager has indicated Select Board interest in forming an Ordinance Review Committee.
- The Town Planner has provided an outline for formation of such a committee that would work within the current administrative framework and the limited staff resources available.
- Other Land Use Ordinance issues facing the Town are the lack of any regulations for cell towers or solar farms.