

Approved May 18, 2011

**CORNWALL PLANNING COMMISSION**  
REGULAR MEETING MINUTES  
April 20, 2011  
Cornwall Town Hall

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**MEMBERS:** Jim Duclos, Jean Terwilliger\*, Geoff Demong, Tracy Himmel Isham, Jim Bolton, Holly Noordsy

**PUBLIC:** Bruce Byers, Tom Dickinson, Kevin Brown, Eric Severy, Bob Burton, David Andrews, Margaret Carothers, Michael Davis, Brent Rakowski, Peter Degraff, Bill Beiderman, Doug Clifton, Peg Clifton, Sue Byers, Glenn Goodwin, John Jefferies, Gabriel Hamilton, Gary Barnett, Mary Dodge

\*CPC member Jean Terwilliger was recused for the duration of the public hearing.

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Meeting called to order at 7:05pm. Quorum established.

**MINUTES**

Jim Boltom MOVED/Jim Duclos SECONDED a motion to approve the minutes of March 16, 2011 as distributed. Motion carried on voice vote.

**PUBLIC HEARING**

**Final Plan Application by Habitat for Humanity of Addison County**, to subdivide premises known as Lot #32.3, abutting DeLong Road, Cornwall, Vermont, consisting of 13.18 acres into 4 Planned Unit Development (PUD) cluster lots, each of approximately one half (1/2) acre. The applicant intends to build a total of four (4) affordable homes. On February 28, 2011, the CPC granted Preliminary Approval for a five (5) - lot subdivision/PUD consisting of four (4) house lots and one (1) lot of common land as depicted on Preliminary Plan Site Drawing I-I, dated 12/14/10, subject to twelve (12) conditions. Tonight's hearing was duly warned on March 31, 2011. The Final Plan Application, dated March 16, 2011, was filed with the Cornwall Town Clerk on March 24, 2011.

Exhibits

- A. Final Plan Application
- B. Cornwall Conservation Commission Report (March 22, 2011)
- C. Cornwall Conservation Commission Report (April 7, 2011)
- D. Narrative of HFH Presentation
- E. Set of Permitting Drawings (March 25, 2011)

### Presentation of Evidence

Bruce Byers, board member of Habitat for Humanity of Addison County; Kevin Brown, attorney; Brent Rakowski, Otter Creek Engineering; and Jean Terwilliger, architect; presented evidence of compliance in the Final Plan Application with the 12 conditions of Preliminary Approval, as follows.

**Condition #1:** The Final Plan Application, dated, March 16, 2011, was filed with the Cornwall Town Clerk on March 24, 2011.

**Condition #2:** Habitat for Humanity constructs and sells its affordable houses in accordance with Section 4303 of the State Statutes (defining affordable housing) and with the definition of affordable housing found in Section 1000 of the Town of Cornwall Zoning By Laws.

**Condition #3:** Preservation of the common land in perpetuity as open space will be accomplished by deed restrictions which impose restrictive covenants on grantee/homeowners, that will run with the land and be enforceable against all future landowners.

**Jim Bolton:** *Who will enforce the covenants?*

**Kevin Brown:** *Habitat has right to enforce. The Town has municipal enforcement authority as well.*

**Jim Bolton:** *It does not make sense for the Town to enforce covenants.*

**Bruce Byers:** *Habitat is a non profit organization that hold the mortgages on it's houses. Homeowners are eager to buy. As a result, Habitat does not have problems with homeowners.*

**Tracy Himmel Isham:** *I would add "equipment or machinery" to the 4<sup>th</sup> condition regarding "storage of any operable or inoperable vehicles..."*

**Tracy Himmel Isham:** *Please make sure that the planting of perennials or of the willow trees is not restricted in the open land.*

**Kevin Brown:** *Restrictions to planting trees in the open space are anything not shown on the final plat.*

**Geoff Demong:** *I would like to suggest that when the site work is being done, that the land be leveled out.*

**Bruce Byers:** *Yes, good idea and that can be considered as an agreement, for the record.*

**Holly Noordsy:** *Can the owners make a community garden or other agricultural uses in the open space? Will this allow that?*

**Kevin Brown:** *Yes, as long as it stayed consistent with open space.*

**Condition #4:** Habitat agrees to install evergreens between the houses for a privacy screen. Landscape plans are on the final plat. Evergreens (minimum 4 feet tall at time of planting) will be installed as houses are being built.

**Geoff Demong:** *To prevent ending up with evergreens that are ultimately too tall, perhaps your architect could suggest appropriate trees.*

**Bruce Byers:** *Good idea.*

**Condition #5:** Habitat agrees to plant willow trees along the westerly side of the common right of way. The land is suitably wet for these types of trees.

**Jim Bolton:** *What about extending the willow trees down further south?*

**Bruce Byers:** *Our reasoning for having them along the westerly side was to provide a privacy screen for the neighbors. We are open to changes, based on your judgment.*

**Condition #6:** Habitat agrees to install utilities to all house lots prior to the construction of any structure and sale of any lot. Location of all utility poles, secondary lines and easements are on the final plat. The feed from the main line to each of the houses is also shown on the final plat.

**Condition #7:** Habitat agrees that the Waste disposal fields for all houses and feed lines to the disposal fields from each house lot will be constructed prior to the construction of any structure and sale of any lot. All are shown on the final plat.

**Conditions #8:** The homeowner's management organization will be a manager-managed homeowners' association (HOA) until all the lots are sold, at which time it will be converted into a member managed HOA. The two main functions of the HOA are to maintain the septic system and plow the road. Once the HOA is member managed, Habitat will continue to stay involved, and has leverage through the mortgage to exert control to make sure everything is properly maintained.

**Tracy Himmell Isham:** *We would want CPC to be able to review changes to the HOA by-laws.*

**Bruce Byers:** *Yes, that is in the covenants.*

**John Jefferies:** *The intent is to continue escrows for the HOA by Habitat, once the HOA becomes member managed.*

**Holly Noordsy:** *So once mortgage is satisfied, conditions run with the land, and Habitat and the HOA have full enforcement authority.*

**Bruce Byers:** *That is correct.*

**Condition #9:** The common area management plan, includes septic areas and the roadway.

**Geoff Demong:** *What will be needed to maintain open space in current state? Will it be mowed with a brush hog to prevent trash trees from taking over?*

**Kevin Brown:** *I interpreted "maintain open space" to mean "keep it open and undeveloped," not "keep it in its current form." If CPC wants something different, just let us know.*

**Jim Bolton:** *At the last hearing, the neighbors were interested in brush hogging being done regularly.*

**Bruce Byers:** *Habitat could do an occasional brush hog.*

**Tracy Himmell Isham:** *The Cornwall Conservation Commission (CCC) recommends more edge and more cover in the open space area.*

**Peter DeGraff:** *Such cover should not be in the area of the waste disposal.*

**Bruce Byers:** *Habitat will do whatever the CPC wants with the open space area.*

**Margaret Carothers:** *We will have to brush hog other areas anyway.*

**Condition #10:** The CCC presented its' findings concerning the Habitat PUD site in a report dated March 22, 2011 and amended on April 7, 2011, compiled by Marc Lapin.

**Bruce Byers:** *I disagree with the CCC report on several points. The report fails to see the bigger picture of the Town Plan. The CCC appears to have no understanding of the project. For example, the report expresses concern about tree cutting in the northern wooded border when Habitat has no plans to cut down tree lines or hedgerows. As for bobcats, they do not have to worry as a result of this project.*

**Jim Bolton:** *I think that the CCC plays an important town role in commenting on proposed projects. Their focus is the ecology. The CPC does put a lot of credence in what the CCC has to say.*

**Tracey Himmel Isham:** *The CCC is surveying not only the humans, but also the non-human elements. The report does identify the resources of the property, from an ecological, not a conservation perspective.*

**Geoff Demong:** *We could encourage the CCC to attend future hearings. That would improve communication and we would not have reports with conclusions that do not apply. For example, I don't support building the envelope for Lot 4 closer to the road, as the report recommends.*

**Condition #11:** Brent Rakowski stated that two State permits are outstanding. The erosion control permit has not been submitted, because it has a time limit and therefore will not be obtained until 2-3 weeks before construction begins. The water supply and wastewater disposal permit was submitted to Marsha Thompson, who has been out on medical leave for the past 2 months. Ms. Thompson has now reviewed the application, said she saw no problems with it, and within a couple of weeks, Habitat should have it.

**Jim Bolton:** *How confident are you that the wells will meet the needs?*

**Brent Rakowski:** *The wells meet the setback requirements and well logs are on file with the State. Review of adjacent wells indicate these wells will be sufficient. Hydrologist who conducted the tests sees no problem.*

**Geoff Demong:** *Regarding the site plan and contours, I wonder if it would be good to revisit the site now and walk down the center of the driveway while it is still wet. It may need to be more elevated. What about a swale to the east of the house lots, to help keep the area dry?*

**Peter DeGraff:** *That is a good idea. Topography study was done in the fall. It would be good to do again in the spring and consider drainage issues behind the houses.*

**Condition #12:** Jean Terwilliger presented drawings of each house to be constructed, that show diversity of design, in keeping with the rural character of the area. There are two main designs for the 3-4 bedroom houses – the Saltbox and the Farmhouse Raised Cape. All houses are oriented to the south, and are highly energy efficient, using less than half the energy of a code-constructed house. The Saltbox design has an accessible bedroom on the first floor. The dimensions are 1000-1400 sq feet. The size of the family will determine which model to build. If a family has more than one person with a need for an accessible bedroom, a ranch design will be used.

**Tracy Himmel Isham:** *If solar energy systems were donated, then could you use common area for it?*

**Kevin Brown:** *Installation of solar energy systems on the common land would not be allowed under the covenants.*

### Comments/Questions from the Public

**Eric Severy:** *I am the adjacent property owner to the west. I am very happy with the 12 conditions. I love the houses. My biggest issue is with the open land and I think that “current open state” means keeping it in agricultural use. I wish Habitat had contacted the neighbors sooner. I feel that Habitat did not do much research into the background of the land and that they have rushed through the project without coming to the neighbors first. I want to be an active part of the project, want to help, but want to be talked to. I am worried about the HOA. How does a Cornwall resident hold Habitat accountable if one of the homeowners don't follow the rules? I also feel that permits need to be received before a decision is made.*

**Bruce Byers:** *Cornwall does not have a nuisance law.*

**Tracy Himmel Isham:** *However, any resident can come and complain to the Town, and in this case, call the Habitat office.*

**Bill Biederman:** *Habitat has control because they own the mortgage. Habitat has a good name and reputation to maintain. This project is very different from federal or state subsidized housing, for example.*

**Mike Davis:** *Habitat has to get a building permit. The Zoning Administrator will not give a building permit until all other permits are in place. We don't want to get a permit just to let it run out. They are expensive.*

**Kevin Brown:** *CPC can make approval conditional on having all permits in place.*

**David Andrews:** *Regarding the process of notification, that's why you have a Planning Commission and hearing process. That is how the Town is notified of plans for development. That is how the system works.*

**Tracy Himmel Isham:** *The CPC appreciates that interested parties are here for these hearings. This IS the process.*

**Eric Severy:** *I still say that coming by in the beginning would have gone a long way with me.*

**Margaret Carothers:** *This is the first time we have done a PUD. I hear you and will add earlier contact with the neighbors to the list to do the next time.*

**Bob Burton:** *I agree with the assurances from Habitat. I am also concerned about the management of the common area.*

**Tracy Himmel Isham:** *I didn't hear any objection from Habitat about haying.*

**Margaret Carothers:** *Yes, Habitat agrees, no objection to haying.*

**Eric Severy:** *I care about the road frontage and want it to be in agricultural use.*

**Gabe Hamilton:** *I am the adjacent landowner to the southeast. I am in full support of the project. I am wondering if open space allows for fencing. The open space may be suitable for someone for pasture.*

**Bob Burton:** *If the land were fenced for agriculture, would the covenants allow for shelter for animals?*

**Geoff Demong:** *Can't the by-laws be amended?*

**Kevin Brown:** *Yes, but covenants would need to be broad enough to allow that use, or else deeds would need to be amended too.*

**Gabe Hamilton:** *If there were a septic event, would I have a right to have my pond tested? Also I wonder about plantings to buffer the pond. I am satisfied about pond issues I raised at the last hearing. What about liability issues – people coming to the pond. About whether there are bobcats in the area, I can tell you that bobcats are eating my chickens and I have seen bobcat tracks.*

**Kevin Brown:** *You will not be liable if people come onto your land.*

**Gary Barnett:** *I am not a neighboring landowner. I am a resident of Cornwall who supports the project. It is an affordable housing project that complies with Town Plan and regulations.*

**Bob Burton:** *The neighbors would like another hearing.*

**Geoff Demong:** *Unless there is new evidence to present, there is no advantage in waiting another month before making a decision. We will not have a hearing just to continue to discuss the same evidence. Will new facts be presented at a future meeting? (No response)*

**Brent Rakowski:** *Once a final decision is handed down, there is an appeal process.*

**Kevin Brown:** *Habitat will go along with whatever is meant by open space.*

**Tracy Himmel Isham:** *The CPC needs to deliberate on the evidence. We will close the hearing in order to deliberate, and have 45 days to hand down our decision.*

Jim Bolton MOVED/ Geoff Demong SECONDED a motion to close the hearing in order to deliberate on the evidence. The motion carried on voice vote.

The meeting was adjourned at 9:20 pm.

Respectfully submitted, Sharon Tierra, CPC Secretary