

Mountain Reach Development
NOTICE OF DECISION – AMENDMENT TO DECISION OF DECEMBER 27, 2006
Goshen Planning Board
August 26, 2008

INTRODUCTION

The December 27, 2006 Notice of Decision related to the application by Mountain Reach Development Group, LLC, to construct a 26 unit open space condominium development with associated on-site and off-site improvements was amended on January 8, 2008. This document is a further amendment to requirements presented in the December 27, 2006 decision, and new provisions presented in the January 8, 2008 amendment. All prior conditions of the December 27, 2006 decision that are not specifically modified in the January 8, 2008 amendment or modified herein remain in effect.

This document follows the format of the original decision and is thus divided into five sections.

- I. **Finding of Fact:** consists of a list of all documents and other relevant findings considered part of the application package.
- II. **Reasoning of Decision:** serves to explain how the Planning Board determined the application met or failed to meet the standards in the Town of Goshen ordinances and regulations. All referenced documents are considered part of the Record of Decision and are incorporated by reference in their entirety.
- III. **Motion:** consists of a motion, which will be made by the person reading this document at a Public Hearing.
- IV. **Conditions Precedent:** consists of a list of conditions that must be met by the applicant before any approval is final. No site work may be initiated until the Goshen Planning Board determines that all conditions in the **Conditions Precedent** section have been met.
- V. **Conditions Subsequent:** consists of a list of conditions on how the project will be implemented.

The terminology used in this document follows that defined in the December 27, 2006 Notice of Decision and thus, for brevity, is not repeated here.

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I. FINDING OF FACT

Goshen Planning Board voting members present for the reading of this document related to the Mountain Reach application are: Chairperson Allen Howe, Richard Moen, Jonathan Purick and Select Board representative James Carrick. Vice-Chairperson John Wirkkala and alternate member John Scranton also participated in the hearings. Planning consultation services were provided to the Board by Peter Dzewaltowski, UVLSRPC.

Following a brief informal presentation by Mark Loehr regarding his conceptual plan for modifications to the Mountain Reach development, the Board convened a Public Hearing on May 27, 2008 to consider modifications to the approved Mountain Reach development proposal. The hearing was continued on the following dates in 2008: June 3, July 1, July 29, and August 26.

The following individuals provided oral testimony for Mountain Reach Development Group LLC (MRDG) during the hearing process:

- Mark Loehr for MRDG;
- Richard Uchida of Orr and Reno, Legal counsel to MRDG;
- David Eckman of Eckman Engineering LLC, Engineering and Survey Services for MRDG;

SUBMITTAL ITEMS

Table 1 includes only those documents relevant to the requested modification of the plan as defined by the December 27, 2006 Notice of Decision and subsequent January 8, 2008 amendment.

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Table 1. Findings of Fact, Mountain Reach Development.

Item No.	Submission	Date
1	Open Space Conservation Easement Document with revisions through August 22, 2008.	Received 8/25/2008
2	Declaration of Covenants and Restrictions for the Benefit of the Town of Goshen with revisions through August 22, 2008.	Received 8/25/2008
3	Declaration of Condominium, Mountain Reach with revisions through August 4, 2008.	Received 8/4/2008
4	Mountain Reach Condominium Rules and Regulations with revisions through August 25, 2008.	Received 8/25/2008
5	Letter from David Eckman, Eckman Engineering, dated July 21, 2008 to Peter Dzewaltowski, UVLSRPC, regarding quantity and cost estimates for the purpose of determining the security bond total	Received 7/25/2008
6	Amended Site Plan Application Package dated August 14, 2008	Received 8/20/2008
7	Revised Open Space Conservation Easement Plan Sheets CE1, CE2, revision date July 30, 2008 (draft mylar)	Received 8/20/2008
8	Letter from T. Andre Bover, Municipal Resources, Inc. dated July 27, 2008 including a review of the applicant's bonding proposal	Received 8/1/2008
9	Letter from Rick Shepard, Goshen Fire Chief, dated July 29, 2008 to Allen Howe, Chair Goshen Planning Board, accepting the amended site plan dated July 23, 2008.	Received 7/29/2008
10	Letter from Peter Dzewaltowski, UVLSRPC to Allen Howe, Chair Goshen Planning Board dated August 26, 2008, summarizing his approval of final construction plans for the development for consistency of plans with the Notice of Decision.	Received 8/26/2008

Other Findings of Fact

The January 8, 2008 amended plan specified that the applicant would retain the existing house, which has its own well, and construct seven new buildings containing a total of 23 new units. The applicant's modified proposal would also retain the existing house and construct four new buildings with six units each for a total of 24 new units. The total number of units of 25 (24 new, plus original house) specified in the modified proposal is less than the maximum number of 26 units approved for the development in the December 27, 2006 decision.

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II. REASONING OF DECISION

No changes, including retention of the existing house and associated increase in the total number of units from 24 to 25, have been made to the development plans that alter the Planning Board's original determinations as presented in the December 27, 2006 Notice of Decision and the January 8, 2008 amendment.

The amount of open space in the modified proposal (Plan Sheets CE-1, CE-2, revision date July 30, 2008) increased 16,296 square feet from that of the January 8, 2008 development plan and now encompasses 67% of the total development area. The modified open space proposal represents a significant improvement in overall layout of the open space development.

The modified proposal has eliminated the loop road and all buildings, except the existing house, from the northern portion of the site (Plan Sheet CE-2). Even without the loop road, the Goshen Fire Chief has approved the layout from the perspective of provision of emergency services.

The previously planned northern part of the loop road would have affected some areas with 15 to 25% slopes and a few locations with slopes greater than 25%. Now that the northern portion of the road has been eliminated, these areas will remain undisturbed. In addition, the area of 15% to 25% slopes impacted in the design is reduced from 7,240 square feet (on the approved site plan) to 5,580 square feet on the current plan. One additional benefit of the new road design is that the steepest grade on the interior road will be 3.5% under the modified plan, versus 10.0% under the previous plan.

Under the new layout leechfields will no longer be within or intrude into the open space. The open space boundary is also smoother and thus more readily delineated. Consolidation of smaller buildings in the southern half of the parcel also decreased tree thinning and limbing associated with the five viewsheds from 40,000 square feet to 32,000 square feet and large tree removal reduced from 26 to 20 (Plan Sheets CE-1 and CE-2).

Reorientation of building A to face the West eliminates the need for tree thinning and limbing to the East, which will make the structure less obvious to people using the adjacent Mt. Sunapee State Park ski slopes. Also, the significant decrease in size of all new buildings will reduce the facial area of the buildings exposed to the West and thus make them less visible when seen from distant vantage points. While the buildings will be smaller than those previously approved, external elements will remain the same.

To achieve the reconfiguration depicted on the August 14, 2008 plans, the four new buildings to be located on the southern half of the parcel will contain six (6) units each with each building allocated two detached three (3) car garages. To achieve a better open space layout the Board previously approved some buildings with more than three (3) units as part of the January 8, 2008 development plan. All of the above factors result in an improved open space development and provide a reasonable basis for the Board to again approve buildings with more than three (3) units.

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III. MOTION

I wish to preface the motion with a few comments to clarify the affect on the development should this modification proposal be approved. Approval of any modification to the development proposal would mean that building number and location, road layout, open space configuration, and all other aspects in the approved plan would completely replace those in any previously approved plan. Any new approved plan would also entirely replace the prior one to the extent of any and all inconsistencies. Once substantial construction begins, any future additional development on the property would have to comply with then-current ordinances and regulations. Once an approval has been granted, and implemented, based on the reservation of any particular area as open space, then no future development of that open space is permitted. In addition, all requirements of the December 27, 2006 Notice of Decision and subsequent January 8, 2008 amendment not modified and approved by vote of the Planning Board will remain in effect.

I, Allen Howe, make a motion that the Board approve the Mountain Reach development proposal as modified by the conditions presented in this document. Seconded by Rich Moen.

IV. CONDITIONS PRECEDENT

The following presents each of the original 19 Conditions Precedent, followed by an explanation in bold face type explaining how the requirement has been met by the applicant or amended by the Planning Board as part of this modification proposal. In the following, “**Satisfied**” will signify that a condition was fulfilled as part of the December 27, 2006 Notice of Decision or subsequent January 8, 2008 amendment and no further action is required due to the modified proposal. “**No Change**” will denote that the Board’s specified approach to meeting a condition remains in effect, but that the condition has not yet been met.

CONDITIONS REQUIRING A PLANNING BOARD HEARING

1. The applicant shall present for Board approval a Town Driveway Permit for a major entrance consistent with Section 4B of the Town Driveway Regulations.

Satisfied.

2. The applicant shall present for Board approval a written endorsement by the Goshen Fire Chief supporting the Fire Protection Plan. The Fire Chief may request the State Fire Marshal to review the proposal and provide suggestions for any advisable revisions. The Board reserves the right to require plan amendments according to the Fire Marshal’s comments.

Rick Shepard, Goshen Fire Chief, submitted a letter dated July 29, 2008 to Allen Howe, Chair, Goshen Planning Board, accepting the amended site plans dated July 23, 2008. Chief Shepard concluded that the Fire Protection Plan for the proposed development meets the requirements of the Goshen Fire Department. This acceptance is conditional based on the requirement that the Goshen Fire Department and it’s officers are allowed to periodically inspect the progress of the installation of the aforementioned items, and to inspect the installed fire protection

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devices to ensure they are properly maintained and function as intended. Mountain Reach Development Group or the Homeowner’s Association must also correct any future fire protection problems or issues identified by the Goshen Fire Department in a timely manner and to the satisfaction of the Fire Department. It is the Board’s conclusion that the August 14, 2008 Site Plan Package includes no changes that would affect Chief Shepard’s approval of the Fire Protection Plan for the development.

3. The applicant shall present for Board approval plans for the three existing “sheds” on the property, in accordance with Site Plan Review Regulations Section VII.C.3.

Satisfied.

4. The applicant shall present to the Board a proposed conservation easement deed to the Town, consistent with Section VII.F of the Ordinance, which is consistent with the submitted Open Space Plan (Table 1, Item No. 50, plan sheets L-6 and L-7, 9/22/06), which provides for public nonmotorized access and makes provisions for a trail corridor, as set forth in the "reasoning" section above, and which provides, at the Town's option, for its administration and enforcement to be delegated to a third party. The easement shall be reviewed for consistency with this Notice of Decision by the Town's attorney, at the applicant's expense, prior to final plan approval.

All aspects of the document have been reviewed and found acceptable by the Town’s Attorney and the Planning Board. All legal issues and policy concerns have been resolved to the satisfaction of the Planning Board. Plan Sheets CE-1 and CE-2, as well as L-6 and L-7, present the open space configuration.

5. The applicant shall present to the Board condominium documents, including the Declaration, By-Laws, and Rules and Regulations, consistent with all of the provisions of this Notice of Decision, as set forth in the "reasoning" section above, to include provisions for inspection and maintenance of all common infrastructure including roads, drainage and fire protection infrastructure. The above condominium documents shall be reviewed by the Town's attorney for consistency with this Notice of Decision and the Goshen Zoning Ordinance and applicable site plan and subdivision regulations, at the applicant's expense.

All Planning Board concerns have been discussed and the final documents, including *Declaration of Covenants for the Benefit of the Town of Goshen*, have been reviewed by the Town’s Attorney and the Planning Board. All legal issues and policy concerns have been resolved to the satisfaction of the Planning Board.

6. The applicant shall present to the Board for approval a review by the UVLSRPC consultant of final construction plans for the development for consistency of plans with this Notice of Decision. Material differences or inconsistencies between the final construction plans and the final Notice of Decision will require additional Board consideration. Also, material differences or inconsistencies between the submissions of 09/22/2006 and earlier submissions will require future Board approval.

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Peter Dzewaltowski, UVLSRPC, reviewed the revised Mountain Reach development plans dated August 14, 2008 and found that the revisions to the January 8, 2008 revised plans are in compliance with the requirements of the Goshen Zoning Ordinance and Site Plan Review and Subdivision Regulations. The current plans are also consistent with this August 26, 2008 Notice of Decision.

7. The applicant shall present to the Board for approval an estimated timetable and cost estimate for construction and completion of infrastructure, landscaping, and improvements to Old Province Road; and an estimated timetable for construction and completion of buildings. The sufficiency of the project's bonding proposal shall be reviewed, at the applicant's expense, by a Professional Engineer employed by the Town and licensed in the State of New Hampshire.

David Eckman's submission regarding Engineer's Quantity and Cost Estimate for Bonding On-Site, Old Province Road Reconstruction, and Old Province/Brook Road Intersection dated July 21, 2008 presented cost estimates for bonding purposes. The adequacy of the cost estimates was reviewed by T. Andre Bover, Municipal Resources, Inc. who determined that the current estimate of \$1,157,455.07 was reasonable and may be used as a bond amount.

The Phasing Plan is included as Plan Sheets P-1 and P-2 dated August 12, 2008 and addresses the schedule for the development and off site improvements, including the Brook Road intersection with Old Province Road.

8. The applicant shall present to the Board for approval a proposal for signage that identifies the deeded open space boundary.

Open Space Conservation Easement Plan sheets CE-1 and CE-2 dated July 30, 2008, depict and describe the signage to delineate the open space boundary.

CONDITIONS REQUIRING ADMINISTRATIVE ACTION ONLY (NO BOARD HEARING WILL BE REQUIRED)

9. The applicant shall present to the Board an approved State of NH Well and Community Water Supply Plan.

Satisfied.

10. The applicant shall present to the Board an approved Site Specific Permit from DES.

The amendment of permit number WPS-7823A issued by DES is still pending. The mylar won't be recorded at the Sullivan County Registry of Deeds nor will building permits for this development be issued until this condition is met. Since this condition requires administrative action only, the applicant need only provide proof this condition has been satisfied and no subsequent public hearing will be required on the matter.

11. The applicant shall present to the Board an approved State Subdivision Permit from DES.

An amendment to the permit is still pending. The mylar won't be recorded at the Sullivan County Registry of Deeds nor will building permits for this development be

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issued until this condition is met. Since this condition requires administrative action only, the applicant need only provide proof this condition has been satisfied and no subsequent public hearing will be required on the matter.

12. The applicant shall present to the Board the Goshen Zoning Board of Adjustment final approval for the already conditionally-approved special exception to place buildings on slopes between 15-25 percent.

Satisfied. The proposed buildings in the modified plan are in essentially the same locations as the buildings in the January 8, 2008 approved plans and thus would have similar impacts on steep slopes. It is the Planning Board's conclusion that changes in the location of buildings and the resultant impact on steep slopes is minor and thus the ZBA's previous reasoning under the special exception criteria would not be affected.

13. The applicant shall present to the Board condominium documents approved by the State Attorney General.

No Change. The Planning Board voted on July 10, 2007 to delay fulfillment of this condition until after the mylar is signed. The mylar won't be recorded at the Sullivan County Registry of Deeds nor will building permits for this development be issued until the above condition is met. For organizational purposes, this condition is now listed as Condition Subsequent 40 in this document.

14. The applicant shall present to the Board an approval by the Goshen Select Board and Road Agent of proposed improvements to Old Province Road.

Satisfied.

15. The applicant shall present to the Board approval by the NH Department of Transportation District 2 for the alteration of the intersection of Old Province Road and Brook Road.

Satisfied.

16. The applicant shall present to the Board a State Driveway Permit for the improvements to the Old Province Road and Brook Road intersection.

No change. The Planning Board voted on July 10, 2007 to delay fulfillment of this condition until after the mylar is signed. In addition, the condition was revised to reflect that a State of New Hampshire Department of Transportation trench permit, not a driveway permit, is the appropriate requirement. For organizational purposes, this condition is now listed as Condition Subsequent 30a in this document.

17. The applicant shall present to the Board two suitable mylars, one for recording at the registry of deeds and one for the Town of Goshen.

No change. The Planning Board voted on August 14, 2007 to waive the Subdivision Regulation 4.13 that required posting of the security bond prior to plan approval, subject to the condition that the mylar won't be recorded at the Sullivan County Registry of Deeds until the security is posted. Upon signing the mylar, the Town

will retain the two original mylars and shall release a paper copy of the signed mylar to the applicant for the purpose of registering the condominium with the State of New Hampshire Attorney General’s Office.

18. The applicant shall present to the Board evidence of acceptable bonding or other security for completion of on-site and off-site roads, drainage, and utility infrastructure, as well as for reclamation and landscaping of all disturbed areas prior to the issuance of a building permit. The Town’s attorney will review the security instrument for legal considerations, at the applicant’s expense.

No change. The Planning Board voted on August 14, 2007 to waive the Subdivision Regulation 4.13 that required posting of the security bond prior to plan approval, subject to the condition that the mylar won’t be recorded at the Sullivan County Registry of Deeds until the security instrument has been reviewed for legal considerations and adequate security has been posted.

19. The applicant shall present to the Board a minimum of 5 blue/blackline copies of the revised plat, including all checklist corrections and any corrections as noted during this hearing.

Two mylars and the above copies shall be presented to the Planning Board once the applicant has received approval of an amended State of NH Subdivision Permit from DES and the associated permit numbers are inserted on the plans and mylars, where appropriate. The UVLSRPC consultant shall review final submissions to verify they comply with Planning Board requirements through the October 2, 2007 hearing and any subsequent requirements before the mylar may be recorded at the Sullivan County Registry of Deeds. As noted above, the mylar won’t be recorded until adequate security is posted.

V. CONDITIONS SUBSEQUENT

The following section includes only Conditions Subsequent that have been amended or added by the Planning Board since the December 27, 2006 Notice of Decision. The single amended provision is followed by an explanation of the amendment in bold faced type. All other Conditions Subsequent presented in the December 27, 2006 Notice of Decision remain in effect. “**No Change**” will denote that the Board’s specified approach to meeting a condition remains in effect, but that the condition has not yet been met.

CONSTRUCTION

21. With the exception of off-site improvements, on-site ground disturbance is prohibited that cannot be graded and seeded by September 15 of any construction year. All site work must be completed by September 15, 2010.

On August 26, 2008 the Planning Board voted to change the completion date of September 15, 2011 to September 15, 2012.

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- 30a. **No Change.** The applicant shall present to the Board a State of New Hampshire Department of Transportation trench permit for the improvements to the Old Province Road and Brook Road intersection.
- 30b. The applicant will pay the cost of an independent licensed landscape architect to a) review the thinning and limbing plan for each of the five viewsheds, b) monitor the initial thinning and limbing for each of the five viewsheds, and c) review the as-built plans for each of the five viewsheds.
- 30c. **No Change, except to recognize there will be five viewshed as-builts, one for each building.** The Applicant's as-built plans for thinning and limbing must be approved by an independent licensed landscape architect prior to the issuance of the last certificate of occupancy for each building.
- 30d. By September 2011 the existing house (Building E) will be modified to conform to condominium association requirements related to exterior elements.
- 30e. **No Change.** Following specifications presented in Section XI.N of the Goshen Site Plan Review Regulations and prior to commencement of construction, the applicant shall measure and present to the Planning Board and Select Board both daytime and nighttime baseline noise levels certified by a New Hampshire licensed professional engineer. In addition, to demonstrate compliance with construction phase noise level standards, as presented in Section XI.N.4 of the Goshen Site Plan Review Regulations, the applicant shall measure and present to the Select Board noise levels certified by a New Hampshire licensed professional engineer throughout the duration of the project.

OPERATIONS

Infrastructure Maintenance

No Change. No additions or changes were made to this section.

Open Space Management

- 38a. The Mountain Reach Condominium Association will pay the cost of an independent licensed landscape architect to monitor the maintenance cutting for each of the five (5) viewsheds in accordance with the as-built plans.

Other Conditions

- 40. **No Change.** The applicant shall present to the Board condominium documents approved by the State Attorney General. The mylar won't be recorded at the Sullivan County Registry of Deeds nor will building permits for this development be issued until the above condition is met.
- 41. **No Change.** The Mountain Reach Development group must apply for a permanent, on-site washroom for maintenance personnel after final approval is granted for this development. This washroom must be operational prior to issuance of the occupancy permit for the last unit in the development.

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42. Landscaping around each unit will be completed within 9 months of completion of such unit and landscaping not associated with a particular unit will be completed within 9 months of the completion of the associated phase. In no case shall any landscaping remain uncompleted after September 15, 2012.