

AGREEMENT

(For Planning Board review and action on 11/10/2008)

WHEREAS, Red Oak Ridge, L.L.C., (hereinafter “Developer”) developer of tracts of land located in New Durham, New Hampshire consisting of some 2000 +/- acres of land has proposed a 220 +/- unit residential development; and

WHEREAS, the Town of New Durham Planning Board (hereafter the “Town”) has conducted a design review phase public hearing pursuant to §5.01 of the New Durham Subdivision Regulations and pursuant to RSA 676:4, II(b) and RSA 676:12 VI on November 6, 2007, and

WHEREAS, two additional public meetings have occurred on January 9, 2008 and July 1, 2008, which were outside of the design review process but which did not alter the fact that the design review process began on November 6, 2007 and, by agreement, is ongoing; and

WHEREAS, it is the Developer’s intent to explore the possibility of preserving the premises in an undeveloped state by means of a conservation purchase; and

WHEREAS, the Planning Board and the Board of Selectmen believe that it would be in the best interests of the Town if such a possibility were fully explored; and

WHEREAS the terms of that conservation purchase or easement have yet to be negotiated between the Developer and potential sources of funding or potential holder(s) of conservation rights; and

WHEREAS, such negotiations may involve the exploration of various possibilities, acceptable to both the Developer and the conservation funding sources, such as limited land reservations or reservation of limited timber rights; and

WHEREAS, the Town does not consider the preliminary surveying, testing or timber cruising necessary to explore these possibilities as breaching or altering this Agreement;

WHEREAS, both the Town and the Developer believe that requiring the Developer to continue to

expend time and money to proceed with the previously presented full residential design review proposal and a subsequent formal application would make the exploration of a conservation alternative much more difficult if not impossible; and

WHEREAS, the Legislature in endorsing innovative land use planning has demonstrated that New Hampshire land use statutes are to be construed to permit flexibility for the parties to explore this type of conservation alternate; and

WHEREAS, RSA 676:12 VI, as amended, provides flexibility to planning boards relative to the procedures to be followed relating to the design review process; and

WHEREAS, the undersigned parties acknowledge that the full exploration of the conservation alternative is likely to take a period of time well in excess of the normal time period required for a large subdivision proposal of this type; and

WHEREAS, in order to explore the conservation alternative, both the Developer and the Town need to be assured that by not terminating the design review process, neither has forfeited nor waived a right or position that it may have asserted under New Durham's Land Use Regulations or applicable state law, during the continuation of the design review process, which the parties acknowledge legally commenced on November 6, 2007.

NOW THEREFORE, the undersigned parties, in consideration of mutual undertaking and assurances, agree as follows:

1. The Developer shall suspend any further formal Planning Board action regarding the residential development discussed at the November 6, 2007, and the January 9, 2008 and July 1, 2008 meetings, subject to the conditions of ¶ 5 below.

2. The New Durham Planning Board will schedule no further meetings or hearings on the residential development subject to the conditions of ¶ 5 below.

3. By agreement of the Developer and the Planning Board, the latter may hold periodic informational meetings with or without notice to abutters, as it may decide, to advise abutters and the public of the progress of the conservation alternative.

4. The Planning Board may participate in various aspects of the conservation alternative project such as developing information, making presentations at either special or regular town meetings or conducting discussions with other town agencies without violating the letter or spirit of this agreement. None of the activities described in Paragraphs 3 or 4 shall be considered part of the pre-application process.

5. Upon the happening of any of the earlier of the following events, the parties shall return to their respective legal positions as of the date of this agreement without prejudice to either:

a. The receipt of written notice by the Town, that the Developer no longer wishes to pursue a conservation alternative; or

b. The passage of a reasonable time not to exceed three (3) years from the date of this Agreement, provided that the Developer and Town may by mutual agreement extend said time period, if further time is reasonably required to accomplish a conservation result.

6. In the event of either 5(a) or 5(b), the parties agree that the design review phase shall be terminated and that the twelve (12) month period specified in RSA 676:12, VI (as amended) shall begin to run no earlier than the date of the notice in 5(a) or the three (3) year anniversary of this Agreement in 5(b), whichever applies.

7. By signing this Agreement, the Town makes no representations regarding the residential development proposal including the completeness, or lack thereof, of a potential application submitted pursuant to RSA 676:12 VI and § 5.02 of the New Durham Subdivision Regulations.

8. The parties agree that both parties have signed this Agreement in good faith reliance upon the assurances and representations of the other, and therefore, both parties agree that they are estopped from asserting positions to the contrary now or in the future.

9. This agreement shall be binding on the Developer and on successor town agencies.

DEVELOPER
Red Oak Ridge, LLC

Date: By Joshua Gruss
Duly Authorized

TOWN OF NEW DURHAM

Date: By Its Selectmen

Date: By Its Planning Board

Date: By Its Conservation Commission