

**NEWRY PLANNING BOARD**  
**MINUTES OF BOARD MEETING**  
**Wednesday, March 1, 2023**  
**Raymond C. Foster Municipal Building**

*Full discussion on topics below is available on audio recording at the Newry Town Office.*

**Members Present:** Bruce Pierce (Board Vice Chair), Ted Baker (Secretary), Randy Akers (Alternate)

**Members Late:**

**Staff Present:** Joelle Corey (Code Enforcement Officer)

**Members & Staff Absent:** John (aka Gootsch) Gauthier (Board Chair)

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**Call to Order:** Vice Chairman Bruce Pierce called the meeting to order at 6:01 PM.

**Current Attendance/Quorum:** The Vice Chair took attendance and confirmed the presence of a quorum. With the absence of Gootsch, Bruce appointed Randy Akers a voting member.

**Prior Attendance/Voting Eligibility:** Randy confirmed that he has listened to the prior meeting's recording and read the materials from that meeting. Therefore, all present members are eligible to vote.

**Previous Meeting's Minutes:** The Board reviewed the previous meeting's minutes. **Bruce moved to accept the minutes February 15<sup>th</sup>, 2023 Planning Board meeting as written; Randy seconded. With no discussion, the motion passed with all voting in favor.**

**As a point of order,** Ted noted that on February 22<sup>nd</sup>, 2023, the Code Enforcement Officer forwarded a piece of correspondence addressed to the Board and received by the Town via USPS. The correspondence was forwarded to the Board for review in preparation for tonight's meeting. Two Board members commented in regards to the correspondence via email addressed to all Board members – the first being John Gauthier on 2/22/2023, and the second being Bruce Pierce on 2/23/2023. Therefore, to comply with the Freedom of Access Act and due process, the minutes of this meeting will need to include 1) a copy of the letter submitted to the Board by David J. Powell dated 2/18/2023, 2) a copy of an email sent by John Gauthier, Chairman of the Board, addressed to all Board members and dated 2/22/2023, and 3) a copy of an email sent by Bruce Pierce, Vice Chair of the Board, addressed to all Board members and dated 2/23/2023. Copies of the above-mentioned correspondence and two emails were distributed to the public citizens in attendance at tonight's meeting.

**Business**

- a) **Chase Hill Subdivision Amendment, Bill Fisher, applicant, R-5/30:** The CEO noted that Mr. Fisher is not attending tonight's meeting. Prior to tonight's meeting, Mr. Fisher submitted revised application, which he signed on 2/19/2023. The Board proceeded to review the revised application to confirm that all changes requested of the applicant during the Board's previous meeting are included in this revision.

**Ted moved that the applicant has re-submitted his application with all the minor amendments and corrections made to it that the Board requested at the last meeting. Randy seconded, and with no further discussion, the motion carried with all members voting in favor.**

The Board proceeded to sign the final site plan.

**Ted moved that the Board formerly approve Application #23-274, an Amendment to the Chase Hill Subdivision. Randy seconded. With no further discussion, the motion carried unanimously.**

- b) **Sunday River Skiway Corp, Map R17/Lot 1 and R13/Lot 13. Construction of new lift at Merrill Hill with a new ski trail and new ski bridge over Morganite Way:** Peter Roberts of Sunday River presented the Board with three signed copies of the application as well as a check to cover the application fee.

**Ted moved that as defined in the Unified Development Review Ordinance, Section 1, General Provisions, C.2.a. (Applicability, Site Use, New Buildings and Structures), the Planning Board has jurisdiction. Bruce seconded. The motion passed unanimously.**

**In view of the fact that the applicant has submitted two Quit Claim Deeds and one lease document with a combined page count of 48 pages and detailing over 28 parcels and 88 easements, Ted therefore moved that the applicant annotate these documents to highlight the specific parcels and easements which apply directly to this application. Randy seconded, and with no discussion, the motion passed unanimously.**

**Given that the Board's Vice Chairman on 2/23/2023 shared with the Board members an email commenting on a letter submitted by an abutter to the applicant and that in the email, the Vice Chair showed bias against the applicant, Ted therefore moved that the Vice Chair be recused from any further review of this application.** The applicant was asked for his opinion on this matter. After taking a moment to read the email written by the Vice Chair, the applicant stated that although the Board member demonstrated certain bias, he felt that discussion is needed from more than just two members of the Board that therefore in the absence of Gootsch tonight, he would like to have Bruce participate in the conversation. The applicant is not opposed to having Bruce remain a voting member on this application. **With no second, this motion dies.**

**Given that the Board's Chairman on 2/22/2023 shared with the Board an email commenting on a letter submitted by an abutter to the applicant and that such email qualifies as a communication outside of an advertised Board meeting, and thus does not confirm with the Freedom of Access Act and proper due process, Ted therefore moved that the Chair be recused from any further review of this application. Randy seconded.** During discussion it was clarified that the Chair would be recused from any further review of this application (including review at future meetings). The applicant stated that his previous comment still carries – more Board members participating in discussion is beneficial; he would prefer to have the Chair involve in this application's review. Following discussion, **all members voted in opposition of the motion. The motion failed.**

Ted reported that he is an employee of Sunday River as a shuttle bus driver, and that in that capacity he has no empowerment to affect decisions by management at Sunday River. He is not affected by his employment in making a fair and impartial decision in this matter. The Board agreed that there is no conflict of interest in this regard.

The application fee of \$4,000 was paid with check #83076. The application fee is calculated as one-tenth of one percent. Ted noted a discrepancy in the estimated cost of the project – the DEP application estimates the project at \$4.5 million, and the letter from the VP of Finance included with the application shows the estimate at \$4 million. Peter stated that he did not have a good answer for the discrepancy, but noted that the DEP application was submitted in September, and he is not sure if the cost of the lift had been finalized at that time. The Board decided they would move on and not “split hairs” over this discrepancy.

**Ted moved that the applicant be required to pay an additional fee to aid the Planning Board in review of this application as allowed and defined in the UDRO Section 10.B.6., and that amount be either 50% of the application fee or \$2,500 whichever is greater; in this case it will be \$2,500.** During discussion, Ted explained that there are enough technical details in this application that he feels the Board should seek outside assistance in reviewing the application, and this escrow would be used to pay for that professional assistance. **Randy seconded.** With no further discussion, **the motion carried with all voting in favor.**

The applicant was asked to submit a check to cover this additional fee.

The application was assigned number 23-275.

Peter Roberts on behalf of Sunday River Skiway Corporation explained the resort's plan to install a second chairlift at the Merrill Hill development. Peter stated that provisions were made for this chairlift in the last phase with easements that were put in place. Along with the new chairlift, the resort is planning to construct 3 new ski trails, 2 new ski bridges which cross Morganite Way.

The Board proceeded to review the application for completeness.

It was noted that the Town has a generic letter on file authorizing Peter Roberts to represent Sunday River. Discussion ensued regarding items 11 through 14 on the application. Peter agreed to complete those sections as the resort's agent.

The group discussed the list of abutters. Using the GIS map on the TV in the meeting room, the CEO showed the location of the proposed project and pointed out the abutters that fall within 1,000 feet of the project area. The applicant agreed that Ski & Tee LLC, owner of Lot 13A between the two Morganite entrances, was mistakenly left off the list; he will send a notification letter to that abutter. It was noted that the area of this project which is currently in Maine's Tree Growth tax program, will need to be removed from Tree Growth.

Regarding item #32 on the application, the applicant was asked to highlight the sections of the submitted deeds and lease which pertain to this project.

Regarding item #34, the list of abutters will need to be corrected and a notification letter sent to Ski & Tee, LLC.

Regarding #40, Peter stated that Lot 13 was part of Bob Meador's parcel that he subdivided, and he dedicated that as common land. However, when Sunday River Skiway Corporation bought the development from the Meador family, the covenant was changed, and Sunday River is the owner of Lot 13. Lot 13 was not dedicated as public common space; it was common space to be shared by the owners of the association, and the covenant was removed when Sunday River purchased the development.

Peter stated that DEP is still reviewing the application before them for this project; the project is not yet approved by DEP.

Discussion ensued regarding traffic. Peter explained that increase in average daily traffic on Monkey Brook Road was taken under consideration when Merrill Hill was subdivided and approved by the Planning Board. Ted spoke about potential/expected pedestrian traffic on Monkey Brook Road with the lift's base area being in relatively close proximity to Mahoosuc Glen subdivision and the golf course. In the revised application, the applicant was asked to include a solution for the pedestrian traffic that is expected on Monkey Brook Road from the base terminal up to and including the entrance to the Sunday River Golf Course. The CEO noted that the section addressing sidewalks and pedestrian easements is Section 13.X.4 in the UDRO.

The applicant spoke of a temporary construction entrance on the plans, which is noted on the plan. The applicant was asked for a driveway plan to accommodate access for emergency vehicles to get to the base area of the lift.

The applicant was also asked to provide a landscaping plan that provides for buffers and screening per page 77 of the UDRO Section 13.AA, Buffers & Screening Standards. Discussion ensued regarding the base terminal of the proposed chairlift being placed in a residential area and the possible adverse impact to the viewscape at Merrill Hill.

Sound levels from the base of the chairlift were also discussed per UDRO Section 13.Z, and the applicant was asked to submit more detailed information in regards to sound levels of the Doppelmayr lift other than the generic statement made on item 79 in the application.

The applicant was asked to add the intended snowmaking and power details to the plan as part of the required information for infrastructure. He was also asked to submit a detailed design for construction of the ski bridges with more detail on the overpasses.

The applicant was told that as part of the approval process, the Board will require a performance guarantee of 10% of the infrastructure cost per UDRO Section 21, which must be paid no later than 5 days before the start of construction. Therefore, a better itemization of construction costs showing the expected cost of infrastructure would be in the applicant's best interest.

The applicant was asked about the estimated fill that will be needed. He stated that he will come up with an estimated cubic yardage of fill for the project. Ted asked the CEO if the Town would require a bond for the unusual traffic on Sunday River Road; the CEO was not sure but said she will discuss it with the Select Board. The Board noted that loader operation is limited to between the hours of 7am to 7pm. It was also noted that trucks cannot arrive at the job site before 7am.

Peter noted that the plan is for this lift to operate next season.

Discussion ensued regarding Section 10.B.12.b (page 38 in the UDRO) stating that proof of receipt is needed for applicable State, Federal, and other required permits prior approval of this application. The applicant stated that approvals of past applications were done with a Condition of Approval requiring proof of all applicable permits be submitted to the Town prior to the start of construction. Ted reiterated that this is a requirement in the UDRO and that perhaps the applicant could request a waiver.

**Ted moved that the application as submitted is incomplete, and that the Board allow the applicant time to review, amend, and resubmit the application at the earliest at the Board's next meeting of 15 March 2023. Randy seconded. With no discussion, the motion passed unanimously.**

The applicant asked for confirmation of the items requested by the Board, and read through his list:

- Project description, which mistakenly says 1 trail and 1 bridge, needs to be revised.
- The 172-acre parcel, R17 Lot 2A-3, which is in Tree Growth, needs to be addressed with the tax accessor.
- Highlight which parcels within the deed are relevant to the application.
- Additional fees being required – Peter will talk to the Town Administrator regarding the balance of the resort's escrow account and bring another check if necessary.
- A letter of authorization authorizing Peter to represent Sunday River at Planning Board meetings.
- Send an abutter letter to the Ski and Tee LLC, an abutter that was mistakenly not included on the abutter list.
- Pedestrian provisions on the Monkey Brook Road between the bottom of the new lift and the golf course.
- Ambulance access to the bottom of the chairlift.
- Landscaping plan that a buffer be used to prevent noise.
- Submit noise data for the new lift for item # 79 on the application.
- Include snowmaking on the plans.
- Include the utility riser pole on the plans.
- Review Joe's previous application to include more detail on the bridges.
- Board intends to require performance guarantees; therefore, a budget showing the cost of infrastructure within the project needs to be submitted.
- The volume of fill estimated for the bridges.
- The Criteria for Approval requires State approval prior to Town approval needs to be addressed.

In response to Ted's question about the Bond for potential damage to Town roads, Joelle noted that topic is on the agenda for the next Select Board meeting.

Peter asked to have this application added to the March 15 agenda.

**CEO Reports**

- a) Joelle reported that Sunday River has requested to be added to the March 15<sup>th</sup> agenda for an application for another ski lift. Joelle will distribute to the Board the documentation that has been submitted to the Town.
- b) Joelle noted that the next agenda (March 15) is expected to include the Merrill Hill lift, a Barker lift, and the Findings of Fact for Chase Hill.

**Open Discussion** - none

**Next Scheduled Meeting** – Wednesday, March 15, 2023, at 1800 hours at the Newry Town Office

**Adjournment** Ted moved to adjourn the Planning Board meeting for March 1<sup>st</sup>, 2023, and reconvene at 6:00 in the evening on March 15<sup>th</sup>, 2023; Randy seconded. Motion passed with all voting in favor. The meeting adjourned at 7:54 PM.

APPROVED