

NEWRY PLANNING BOARD
MINUTES OF BOARD MEETING
Wednesday, April 5, 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)

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

Current Attendance/Quorum AND Prior Attendance/Voting Eligibility: The Vice Chair took attendance and confirmed the presence of a quorum. **Bruce moved to appoint Randy as a voting member. It was confirmed that Randy listened to the recording of the March 15th meeting and is eligible to vote. Ted seconded the motion, and it passed unanimously.**

ELECTIONS: Ted moved that the Board override Section 5 of the Planning Board Bylaws to better reflect the current fiscal year and Town meeting dates and that the Board table the organizational meeting and election of officers until the Board's first meeting in July. Randy seconded. The motion passed unanimously.

Previous Meeting's Minutes: The Board reviewed the previous meeting's minutes. **Ted moved that the minutes of the meeting held March 15th, 2023, as presented with the April 3rd email to the Board be accepted as written. Randy seconded. With no discussion, the motion passed with all voting in favor.**

Business

- a) **(TABLED on 3/15/2023 per applicant's request)** Sunday River Skiway Corp, Map R17/Lot 1 and R13/Lot 13. Construction of new lift at Merrill Hill R-17/2A3 (no tax data for this lot; it is combined with R-17/1) – Application #23-275:
- b) **Con't Discussion -- Barker Mountain Express Replacement Ski Lift Doppelmayr 6-place lift, terminal enclosures and attached maintenance building, R-12/25 & 26 and R-13/32 & 34 – Application # 23-276:**

To review: the Board voted the application complete at the last meeting. Ted noted that the vote started the 60-day clock for the Board to either approve or disapprove the application, and that the timeframe ends between the Board's first and second meeting in May.

Ted listed the following steps that need to be completed:

- The Board needs to review the Gorrill Palmer memo and Sunday River's response to that memo;
- The Applicant needs to amend the initial application to reflect all current amendments;
- The Board needs to go through Section 5, Criteria for Approval;
- The Board needs to determine performance guarantees;
- The Applicant needs to show receipt of all applicable State and Federal permits; and/or the Board needs to act on the Applicant's request for waiver of such;
- The Board needs to develop a scope of inspections for the third-party inspectors that the Board has already voted on and approved for the project;
- The Board needs to develop conditions of approval, which will need to be reflected on the final plan.

Ted moved that the letter from Perkins Thompson dated April 5th, 2023, subject: Sunday River Skiway application for Barker Chairlift #1 Replacement Performance Guarantee Question, be attached to the minutes of this meeting. Bruce seconded, and the motion passed unanimously.

Discussion ensued regarding the letter from the Town's attorney and whether, since the new lift is larger and being built to the right of the existing lift, would any new drainage and stormwater systems be significant enough to warrant a performance guarantee or would a performance guarantee be not applicable to this application. In regards to the attorney's letter, Ted felt that the attorney did not have enough information as to the scope of this new application.

The reason for the performance guarantee is to protect the Town's interest in regards to required infrastructure, and in this case, the required infrastructure would be to protect stormwater from running into Barker Brook.

Peter gave a verbal estimate of \$55k for this infrastructure, which included two under-drain soil filter basins at \$25k each, 11 new water bars which would require approximately 1 hour of excavator work per water bar at a cost of \$200/hour, a total of 4 rolls of erosion control blankets at \$260 each plus 11 hours labor for installing the blankets at \$50/hour, and \$24 per water bar for staples. With that in mind, a 10% performance guarantee would come to \$5,500 and would be due 5 days prior to the start of construction. This \$5,500 will be held in an escrow account.

A check in the amount of \$11,000 was received from SR on 4/5/2023 for the escrow account to hire consultants from Gorrill Palmer for a third-party review of the application.

Peter noted that he is requesting a waiver for the requirement of State permit approval prior to Town Planning Board approval as noted on item 83 of the application. He is, instead, asking for a condition of approval that would require Maine DEP permit approval prior to the start of construction.

Whereas Section 10 (Application Procedure and Submission Requirements) of the UDRO, subsection B. (Procedure), subsection 12. (Approval/Denial Criteria), subparagraph b., states "Applicant shall prove receipt of all applicable State, Federal, and other required permits." as well as applicant's request for a waiver of the forementioned reference, Ted moved that the waiver be granted. Randy seconded. In discussion, Ted spoke of his desire to vote not in favor of the motion because he feels that once the application is approved and the applicant walks out the door, the Planning Board has no enforcement or other means to review or open the application again and the Board loses control. Ted and Bruce voted in opposition and Randy abstained. The motion fails.

Lengthy discussion ensued amongst the Board and the applicant regarding State and Federal approvals being in place prior to the Town granting its approval. Ted noted that the Planning Board may wish to have their consultant review the DEP permit for completeness and that the Board may impose their own restrictions after seeing DEP's approved permit. The applicant stated that he feels the waiver is fully justified based on the fact that the UDRO allows waivers and gives conditions for what needs to be met in order for a waiver to be granted. He stated that he feels there is one member of the Board who wants to have the final say after the State DEP has approved the project, and that he [the applicant] does not understand how the State's approval would change anything to do with the Town's ordinance or the Board's review, approval, or conditions of approval.

Ted stated that he has not had the chance to put together a collection of Conditions of Approval, nor has the Board had the opportunity to discuss it amongst themselves and with their consultant, and he moved that the Board table this and move on the Criteria for Approval. Randy seconded. With no further discussion, the motion passed unanimously.

CRITERIA FOR APPROVAL FOR THE UNIFIED DEVELOPMENT REVIEW ORDINANCE (pages 21-24)

- A. **Pollution** – Ted moved that the applicant’s site plan does not deal with effluence or other pollutants, both air and water-wise, and therefore, he moved that the Board find Section A., Pollution, is satisfied. Bruce seconded. The motion passed unanimously.
- B. **Erosion** – Ted moved that the applicant has satisfied the conditions required for erosion. Randy seconded. In discussion, it was noted that the application, as submitted by the applicant, was given to the Board’s consulting engineer, Gorrill Palmer, who responded to the Board with a memo dated 3/31/2023. The applicant submitted a written response to GP’s memo on 4/4/2023, and GP’s response to the applicant’s reply is dated 4/5/2023. Following discussion about the items in the original memo and the two replies, the motion passed unanimously.
- C. **Traffic** – Bruce moved that this item is not applicable. Randy seconded. In discussion, it was noted that the marketing of the new lift will bring more people to the valley, and that there is already a situation with congestion on the three town roads and concern was expressed regarding emergency response vehicles. Ted stated that the applicant has not done a traffic survey or consulted a traffic engineer, nor has the applicant shown interest in a long-term resolution to a situation that is already unacceptable. The applicant distributed a memo regarding the resort’s commitment to clean out a previously approved parking lot that in recent years has been used as a storage lot; the resort is reclaiming that lot for parking. In further, lengthy discussion, the Board and applicant talked about the flow rate on the two-lane road, the intersection of Sunday River and Skiway Roads, and who should put together a corridor management committee to address the issues on these Town roads, and perhaps have a traffic study done and create a corridor plan. Peter offered to go to the Road Commissioners to start a conversation about a corridor plan with the stakeholders (Town of Newry, Town of Bethel, Maine DOT, etc.). All three members voted in opposition; the motion failed. Ted moved that the application as submitted does cause unreasonable highway or public road congestion or unsafe conditions in respect to the use of the highways or public roads existing or proposed, and that a condition of approval to be developed in regards to the applicant conducting a traffic study during the next ski season to satisfy this criteria. Randy seconded. The motion passed unanimously.
- D. **Sewage Disposal** – Ted moved that sewage disposal is not applicable since there are no facilities that would generate sewage involved in this application. Randy seconded. With no discussion, the motion passed unanimously.
- E. **Municipal Solid Waste Disposal** – Ted moved that the application, as submitted by the applicant, has no impact on the municipal solid waste disposal. Randy seconded. With no discussion, the motion passed unanimously.

Ted moved that the Board table this review of this application, # 23-276, to be continued at the Board’s next meeting so that the Board may proceed with other business on tonight’s agenda. Bruce seconded. In discussion, the applicant requested that the Board extend the meeting to get through the Criteria for Approval so that if there are other conditions, he can make sure he understands what they are coming into the next meeting. Randy voted in favor; Bruce and Ted voted in opposition. The motion failed.

Ted moved that the Board extend the meeting for another 25 minutes until 8:15pm. Bruce seconded the motion. With no discussion, the motion passed unanimously.

- F. **Aesthetic, Cultural and Natural Values** – Ted moved that the application does not have any significant effect on aesthetic, cultural and natural values. Randy seconded. With no discussion, the motion passed unanimously.
- G. **Financial and Technical Capacity** – Ted moved that the applicant has demonstrated sufficient and adequate financial and technical capacity, and therefore, Financial and Technical Capacity is met; Randy seconded. With no discussion, the motion passed unanimously.

- H. **Sufficient Water** – Ted moved that Section 5, subsection H, Sufficient Water, is not applicable. Bruce seconded. With no discussion, the motion passed unanimously.
- I. **Public Water Supply** – Bruce moved that the public water will not be affected. Randy seconded. With no discussion, the motion passed unanimously.
- J. **Surface Waters** – Bruce moved that J, Surface Waters, is not applicable. Randy seconded. Two members voted in favor; Ted voted in opposition. The motion carries.
- K. **Ground Water** – Ted moved that the Board table Ground Water discussion until the next meeting. Bruce seconded. In response to the Applicant’s question as to why this item is being tabled, Ted stated that he would like to do more research. The motion passed unanimously.
- L. **Flood Areas** – Ted moved that Section 5 subsection L, Flood Areas, is not applicable since the site is not within a Federal Emergency Management Area flood boundary or flood plain. Randy seconded. With no discussion, the motion passed unanimously.
- M. **Freshwater Wetlands** – Ted moved that the applicant has studied and properly recorded all freshwater wetlands within the site, and therefore, Section 5, subsection M is satisfied. Randy seconded. With no discussion, the motion passed unanimously.
- N. **River, Stream or Brook** – Randy moved that River, Stream, or Brook, in subsection N has been identified on the site map. Ted seconded. With no discussion, the motion passed unanimously.
- O. **Storm Water** – Ted moved that the Board table Section 5, subsection O, Storm Water, until the Board’s next meeting to give time for all Board members to review the considerable amount of letters and other written materials submitted in regards to storm water. Bruce seconded. With no discussion, the motion passed unanimously.
- P. **Spaghetti-Lots Prohibited** – Ted moved that Section 5, subsection P, Spaghetti Lots Prohibited, is not applicable to this application. Randy seconded. With no discussion, the motion passed unanimously.
- Q. **Municipal Services** – Ted moved that Section 5, subsection Q, Municipal Services, are not affected by the application. Bruce seconded. With no discussion, the motion passed unanimously.
- R. **Lake Phosphorus Concentration** – Bruce moved that this item is not applicable. Ted seconded. With no discussion, the motion passed unanimously.
- S. **Impact on Adjoining Municipality** – Ted moved that Section 5, subsection S, Impact on Adjoining Municipality, is not applicable. Randy seconded. With no discussion, the motion passed unanimously.
- T. **Land Subject to Liquidation Harvesting** – Ted moved that Section 5, subsection T, Land Subject to Liquidation Harvesting, has been met and that there has been no harvesting on the parcels referenced in the application in the last 5 years. Randy seconded. With no discussion, the motion passed unanimously.
- U. **Conformity with Local Ordinances and Plans** – Ted moved that Section 5, subsection U, Conformity with Local Ordinances and Plans, be tabled and considered after the previously tables criteria are resolved. Bruce seconded. With no discussion, the motion passed unanimously.

Ted moved that the Board table the review of Application 23-276 until the Board’s next scheduled meeting, which is on April 19th. Bruce seconded. The motion passed unanimously.

CEO Reports – No updates; the CEO needed to leave the meeting at 7:40pm.

Open Discussion

- a) Ted noted that Locke Summit subdivision, that straddles Bethel, has a new owner. The CEOs of both Bethel and Newry have reviewed the subdivision plans that are on file and have determined that there is phasing and that the phasing plan is good until April 2026. No enforcement action is needed at this time.

Next Scheduled Meeting – Wednesday, April 19, 2023, at 6 o’clock in the evening.

Adjournment Ted moved to adjourn; Bruce seconded. Motion passed with all voting in favor. The meeting adjourned at 8:16 PM.