

NEWRY PLANNING BOARD
MINUTES OF BOARD MEETING
Wednesday, May 17, 2023
Raymond C. Foster Municipal Building

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

Members Present: John (aka Gootsch) Gauthier (Board Chair), Bruce Pierce (Board Vice Chair), Ted Baker (Secretary)

Members Late:

Staff Present: Joelle Corey (Code Enforcement Officer)

Members & Staff Absent: Randy Akers (Alternate)

Call to Order: Chairman John Gauthier called the meeting to order at 7:17 PM.

Current Attendance/Quorum: The Chair took attendance and confirmed the presence of a quorum.

Prior Attendance/Voting Eligibility: The 3 present members have attended recent meetings and, therefore, are eligible to vote.

Previous Meeting's Minutes: The Board reviewed the previous meeting's minutes. **Ted moved to accept the minutes of the last meeting, which occurred on May 3rd, 2023, as drafted; Bruce seconded. With no discussion, the motion passed with all voting in favor.**

Ted moved to amend the agenda and that the Board put item B under Business first before the Board continues on with the discussion on the Merrill Hill application; Ted clarified that item B is the Findings of Fact on the Barker Lift Replacement. Gootsch seconded, and the motion passed unanimously.

Business

- b) **FINDINGS OF FACT for 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:** The Board proceeded to review the Findings of Fact. The Recording Secretary reminded the Board of the corrections that were made following the distribution of the first draft – those corrections were:
- On page 4 under “At the Board’s April 5th Meeting”, the second motion the vote was corrected to read “2 in opposition; Motion failed”.
 - On page 4 in the Findings of Fact statement under “U. Conformity with Local Ordinances and Plans”, “be tabled and considered after the previously tables criteria”, the word “tables” was corrected to read “tabled”.

Ted moved to accept the Findings of Fact and Conclusions of Law for Application # 23-276, Barker Mountain Express Chairlift Replacement/Upgrade with the corrections as noted and as currently presented to the Board. Bruce seconded, and the motion passed unanimously.

- a) **Con’t Discussion -- Sunday River Skiway Corp, Map R17/Lot 2A-3 and Map R13/Lot 13. Construction of new lift at Merrill Hill – Application #23-275:**

As a point of order, Ted noted that during the just-adjourned Public Hearing a member of the Board spoke at the Hearing with potential bias for this application, and therefore, Ted moved that the vice chair be recused from reviewing this application. Gootsch seconded. During the discussion, the applicant was asked for his opinion. Peter stated that he feels the Board of 3 is a better representation of what the Town wants and needs, and therefore, he has no concerns about Bruce remaining as a voting member. Bruce clarified that he has no bias;

he just had a question about the future weather patterns, etc. Following discussion, **Ted and Gootsch voted in opposition; the motion failed.**

The applicant submitted some confirmation of delivery cards which he received from the notifications that were sent out to abutters via certified mail for the Public Hearing. Peter also submitted a Certificate of Good Standing from the Secretary of State for Sunday River Skiway Corporation; Peter will add this to the bound copy of the application. Peter submitted revised drawings showing the existing buildings within a certain radius of the project per the UDRO; the only existing building within that radius is Mr. Powell's home, which is now shown on the Site Plan.

It was noted that payment of the Tree Growth penalty fee in the amount of \$32,206.30 was paid to the Town via check # 84852 on May 17, 2023. Discussion ensued regarding the land taken out of tree growth (the property affected by this project) and the land that remains in tree growth.

In terms of requested waivers, the applicant spoke of his request to waive having DEP approval prior to the Planning Board granting their final approval, and instead have a condition of approval placed on the application stating that the DEP Permit must be submitted to the Town prior to the start of construction.

Ted moved that the Board grant the waiver as requested in item 81 of the Application such that the applicant does not have to present the Board with the approved Maine DEP permit and that the Board place a condition of approval conditioning approval on Maine DEP's approval. Gootsch seconded. In discussion, Ted noted that this discussion has taken place before, and that he maintains his arguments that he prefers that the Board maintain its right of final review, and that all permits required be obtained first before the Planning Board grants final approval. **Ted, Bruce, and Gootsch voted in opposition; the motion fails.**

Ted moved to table review of any further waivers until the next meeting. Gootsch seconded, and the motion passed unanimously.

Ted moved that the Board include the following as a condition of approval: Applicant will ensure proper concrete washout procedures are followed as per Maine Erosion and Sediment Control Best Management Practices (BPMs), Manual for Design and Engineers, Section A.6. and Maine DEP Chapter 500 Housekeeping Standards. Gootsch seconded, and the motion passed unanimously.

Ted moved that the Board include the following as a condition of approval: Applicant will provide the inspecting official proof that excavation contractors are certified in erosion and sediment control by Maine DEP as per the Unified Development Review Ordinance of the Town of Newry (aka UDRO) Section 13.G.1. Bruce seconded, and the motion passed unanimously.

The applicant asked the Chair for the opportunity to comment on the conditions of approval prior to the vote. The Board confirmed that the applicant has a copy of Ted's typed motions and asked if he had comments regarding the previous motion. Peter noted that he wanted to confirm the section of the ordinance that supports the condition of approval.

Ted moved that the Board include the following as a condition of approval: Applicant will comply with the UDRO Section 13.Z and provide the Town of Newry with written results of pre-development and post-development ambient sound taken from protected locations specified by the Town's Code Enforcement Officer. Bruce seconded. The Board and the applicant discussed this section, which is found on pages 69 through 77 in the UDRO. Following discussion, **there was one vote in favor; Bruce and Gootsch voted in opposition. The motion failed.**

Ted moved that the Board include the following as a condition of approval: Weekly inspection reports as well as before and after storm event reports, as required per the Erosions Control Notes (drawing #5), will be forwarded by the applicant to the Town's inspection official. Bruce seconded. The applicant noted that he understands the intent but does not find anywhere in the ordinance that supports this condition. He stated that he has never held back inspection reports whenever the CEO has requested to see them; Peter added that he is opposed to having this as a condition of approval. Following discussion, **the motion passed unanimously.**

Ted moved that the Board include the following as a condition of approval: All construction entrances off of Monkey Brook Road are to be reclaimed to pre-development condition upon project completion. Gootsch seconded. Following lengthy discussion, **Ted, Gootsch, and Bruce voted in opposition. The motion failed.**

Ted moved that the Board include the following as a condition of approval: All construction entrances off of Monkey Brook Road are to be adequately blocked from daily access by the placement of large, immovable objects. Bruce seconded, and the motion passed unanimously.

Ted moved that the Board include the following as a condition of approval: Applicant will not build any entrances off of Monkey Brook Road without first obtaining approval from the Newry Planning Board. Bruce seconded. The applicant questioned if this condition was supported by the ordinance and noted that the resort owns more property along Monkey Brook Road other than the lots pertaining to this project. Ted noted that the motion applies to this application, and the application specifies the lots included in this project. Following lengthy discussion, **two members voted in favor; Gootsch voted in opposition. The motion passed.**

Ted moved that the Board include the following as a condition of approval: Erosion control details will be included on the final construction plans and the erosion control narrative will be included in the project specifications to be provided to the construction contractor. Gootsch seconded. Following discussion, **the motion passed unanimously.**

Ted moved that the Board include the following as a condition of approval: Applicant shall retain the design engineer or other qualified professional engineer to oversee the construction of the stormwater Best Management Practices. Gootsch seconded. Following discussion, **the motion passed unanimously.**

Ted moved that the Board include the following as a condition of approval: Within 30 days from completion of the entire system, the applicant shall submit an as-built plan of the project and a log of inspection reports detailing the items inspected, photographs taken, and dates of each inspection to the Town. Gootsch seconded. The applicant questioned where the ordinance gives the Board jurisdiction to require this as a condition of approval. Following discussion regarding various standards in the ordinance, **two members voted in favor; Gootsch opposed. The motion passed.**

The Board proceeded to review the Criteria for Approval.

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

- A. **Pollution** – The Chair noted that this project lies above sea level, and it is not in a floodplain; there are no bathroom facilities included in this project; and sewage disposal does not apply to this project. **Ted moved that the proposed development will not result in undue water or air pollution. Bruce seconded, and the motion passed unanimously.**
- B. **Erosion** – **Ted moved that the Board table Section 5 subsection B, Erosion, until the Board has more time to expand on the erosion that could be caused by snowmaking runoff which has not been detailed by the applicant, and also there is a significant interest in the public towards erosion control as judging from the Public Hearing, and the Board needs to make sure that the plan is correct and all encompassing. Bruce seconded, and the motion passed unanimously.** Following the vote, the applicant asked for clarification as to what the Board would like to see from him prior to the Board's next meeting

to address concerns on this item. Following discussion, the applicant confirmed with the Board that there are three areas needing to be addressed 1) reassurance to the Board that the applicant has addressed the issues raised by the public in the Public Hearing; 2) the Board is hoping to give Mahoosuc Glen HOA more time to review the application with their consultant; and 3) the Board and applicant will go through another iteration of responses with Gorrill Palmer before this topic is brought back to the table.

- C. **Traffic** – Bruce moved that Section 5 subsection C, Traffic, meets the criteria of approval. Gootsch seconded. In discussion, it was noted that the subdivision was approved a long time ago and this project is not adding another subdivision; it is just building out the subdivision that was approved. The applicant noted that this project just adds more value to the lots that were previously approved. It was also noted that a traffic study is already planned for the future. Following discussion, **the motion passed unanimously.**
- D. **Sewage Disposal** – Ted moved that Section 5, subsection D, Sewage Disposal, is not applicable to this application. Gootsch seconded, and the motion passed unanimously.
- E. **Municipal Solid Waste Disposal** – Bruce moved that Section 5, subsection E, Municipal Solid Waste Disposal is not applicable. Gootsch seconded. In discussion, the Board asked, and the applicant agreed to add a statement to his drawings requiring the construction contractor to abide by Section 13 subsection R, Refuge Disposal (page 65 in the UDRO), as it relates to construction. Following discussion, **the motion passed unanimously.**
- F. **Aesthetic, Cultural and Natural Values** – The Chair noted that there is no shoreline at this project site. The applicant stated that part of the DEP approval process is notification of the Maine Natural Areas Program, the Fisheries and Wildlife, and the Historic Preservation Commission, and these organizations replied that they don't have any objections to the project. The applicant was asked to abide by Performance Standards Section 13, subsection C, Preservation and Enhancement of the Landscape, and the applicant agreed to do so. **Bruce moved that under Section 5, subsection F, Aesthetic, Cultural, and Natural Values, that criteria has been met. Ted seconded. The motion passed unanimously.**
- G. **Financial and Technical Capacity** – The Chair noted that a letter has been received stating that the resort can afford the project; and Peter, as chief engineer, has the technical capacity. The applicant added that the developer has done several similar chairlift projects. **Gootsch moved that G, Financial and Technical Capacity has been met. Bruce seconded, and the motion passed unanimously.**
- H. **Sufficient Water** – Ted moved that Section 5, subsection H, Sufficient Water, and subsection I, Public Water Supply, are not applicable to this application. Bruce seconded. **The motion passed unanimously.**
- I. **Public Water Supply** – *see motion above.*
- J. **Surface Waters** – Gootsch noted that there are minor wetlands in this project, and that it is not within 250' of any great pond or river, and therefore, he moved that J, Surface Waters, has been met. Ted seconded, and the motion passed unanimously.
- K. **Ground Water** – Ted moved that the application is in compliance with Section 5, subsection K, Ground Water, that it will not adversely affect the quality or quantity of groundwater. Gootsch seconded. **The motion passed unanimously.**
- L. **Flood Areas** – Gootsch moved that L, Flood Areas, is not applicable to this project. Ted seconded, and the motion passed unanimously.
- M. **Freshwater Wetlands** – Gootsch stated that there are a number of wetlands identified on Peter's maps; they are non-significant (they are less than an acre each), therefore, he moved that M., Freshwater Wetlands has been met. Bruce seconded, and the motion passed unanimously.
- N. **River, Stream or Brook** – Ted moved that Section 5, subsection N, River, Stream or Brook, is not applicable to this application. Bruce seconded, and the motion passed unanimously.
- O. **Storm Water** – Gootsch moved that Storm Water has been met. Ted seconded. During discussion, the Board reviewed the memo from Gorrill Palmer, which notes that this item has not been met. Gorrill Palmer's comments on this topic were read aloud, and the Board spoke of concerns voiced at tonight's Public Hearing. **Ted, Bruce, and Gootsch voted in opposition. The motion failed.**

Ted moved that the Board table Section 5, subsection O, Storm Water, to give the Board's consultant time to address, give the applicant time to address, and to give the Mahoosuc Glen HOA time to address

stormwater runoff. Bruce seconded, and the motion passed unanimously. It was clarified that this will be tabled until the Board's next meeting, which is the first Wednesday of June, June 7th.

- P. **Spaghetti-Lots Prohibited** – Ted moved that Section 5, subsection P, Spaghetti-Lots Prohibited; subsection Q, Municipal Services; subsection R, Lake Phosphorus Concentration; subsection S, Impact on Adjoining Municipality; subsection T, Land Subject to Liquidation Harvesting; are not applicable. Bruce seconded, and the motion passed unanimously.
- Q. **Municipal Services** – see motion above.
- R. **Lake Phosphorus Concentration** – see motion above.
- S. **Impact on Adjoining Municipality** – see motion above.
- T. **Land Subject to Liquidation Harvesting** – see motion above.
- U. **Conformity with Local Ordinances and Plans** – Ted moved that the Board table Section 5, subsection U, Conformity with Local Ordinances and Plans until the Board has approved or disapproved Section 5, subsection B, Erosion, and Section 5, subsection O, Storm Water. Bruce seconded, and the motion passed unanimously.

The applicant confirmed the items he is to address before the Board's next meeting:

- The Secretary of State certificate needs to be bound in the application. It was noted that all supporting documents pertaining to the application should be included in the bound application packet,
- The Lot number needs to be corrected on the application,
- Erosion is tabled – he needs to make responses to comments that address the issues raised in the Public Hearing,
- Responses to Gorrill Palmer,
- Add a note regarding solid waste,
- Storm Water has been tabled for the same reason Erosion,
- And add the Conditions of Approval to the final plans.

CEO Report

- a) Joelle reported that the three escrow accounts (for the application review, for inspections, for performance guarantee) are all up to date.

Open Discussion

- a) Ted and Joelle spoke about Section 5 (Criteria for Approval) and Section 13 (Performance Standards) in the UDRO and stated that the Board needs to decide how Performance Standards should be incorporated into the application review process. Joelle noted that AVCOG is reviewing the UDRO now and will recommend revisions.
- b) The group discussed LD2003, which allows a second house to be built on a lot. Joelle noted that she and fellow code officers are not happy with this law, which was signed by the Governor in April of 2022 but does not take effect until July 1, 2023. Gootsch will bring to the next meeting a copy of the article he found on this subject.
- c) Ted asked if the Board is obligated to respond to any of the public comments made at tonight's Public Hearing. Joelle replied that, in her opinion as CEO, the Board should address the comments that were made specific to the UDRO. Discussion ensued noting that some comments were regarding enforcement issues, and that some pertained to other applications, which are no longer before the Board.

Next Scheduled Meeting – Wednesday, June 7, 2023, at 6:30

Adjournment Ted moved to adjourn; Bruce seconded. Motion passed with all voting in favor. The meeting adjourned at 9:32 PM.