

**NEWRY PLANNING BOARD**  
**MINUTES OF BOARD MEETING**  
**Wednesday, February 21, 2024**  
**Raymond C. Foster Municipal Building**

*Full discussion on the 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 (Board Secretary), Rob Kates (Alternate)

**Members Late:**

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

**Members & Staff Absent:** Meredith Harrop (Alternate)

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**Call to Order:** Chairman John Gauthier called the meeting to order at 6:00 PM.

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

**Prior Attendance/Voting Eligibility:** With no recent absences, all full Board members are eligible to vote.

**Previous Meeting's Minutes:** The Board reviewed the previous meeting's minutes. Ted noted a correction needed on page 1 in the first bullet of motion 2 – adding a "t" to the word "no", which should read "The proposed development should not cause...". **Ted moved for the Board to accept the minutes from Wednesday, February 7<sup>th</sup>, 2024, as amended with the one noted correction. Gootsch seconded. During discussion the group talked about the 3200 Knox Box mentioned in the minutes; Joelle explained that it is a specific lock box. Following discussion, the motion passed with all voting in favor.**

**Business**

a) **Training on the Application Review Steps/Process:** Ted stated that this topic was highlighted when he attended the MMA Planning Board training in December. He noted that the Planning Board's practice of jumping into the review of an application when the Board is still trying to determine if the application is complete draws out the application process. When the Board is determining if an application is complete, the Board should only be confirming that the applicant has submitted the information required by the application procedure noted in the ordinance. The Board should not, at that point, be discussing nor reviewing the appropriateness or completeness of that information. The Board should vote on whether the application is complete before moving into reviewing the application for compliance with the ordinance.

When the Board finds an application complete, that vote starts a 30-day clock for the review process. Ted stated that he believes that the 30-day window may be extended if the extension is mutually agreed upon by the Board and the applicant.

If an application is found to be incomplete, the applicant must submit the missing information within the 30-day window, or the applicant and the Board must agree upon an extension. If the missing information is not submitted within the 30-day window or an extension has not been mutually agreed upon, then the Board must deny the application at the 30-day mark (which is two meetings, or just one meeting if there is a 3-week period between meetings). Once the application is denied, the applicant may go to the Board of Appeals or submit a new application (with a new application fee).

Once an application is found complete, the Board then begins the review process as noted in Section 5, Criteria of Approval. This is when the Board looks at the application's compliance with the ordinance and all the required/applicable criteria of approval including Section 5.U., Compliance with Local Ordinances and Plans, which would include all applicable performance standards.

The Criteria of Approval is reviewed to establish the Findings of Fact. Therefore, as the Board votes on each criterion and moves whether a criterion has been met or not, those motions should state how the criterion was met (i.e., Per the stormwater management plan submitted by the applicant, the applicant has met the requirement of item 5.O., Stormwater.).

Ted emphasized that the point that was driven home by the Maine Municipal Association training was that a Planning Board should not be dictating or leading an applicant into what should be on the application. Ted noted that the way the Planning Board had been doing business could conceivably get the Town into trouble. The Board should only look at what the applicant submits and should not make suggestions to the applicant. Although the new process may be seen as being less customer friendly (or applicant friendly), it could be conceived as showing favoritism when the Board leads an applicant. Ted noted that he believes the Board could still be customer/applicant friendly, but the Board needs to be careful where and when the Board does that.

The Recording Secretary explained that when she sends a letter to the applicant stating that the application was approved, approved with conditions (in which case the conditions are listed) or denied, if the application was denied, a reason for the denial must be noted in the letter. This letter is generally sent with the approved Findings of Fact.

Ted suggested that a letter should also be sent to an applicant when their application has been deemed complete or found incomplete and list the specific items that the Board found to be deficient. This could be done with a form letter and could be signed by the CEO or the Chairperson.

Ted suggested that Board members use a blank application to make their notes on as they review an application for completeness, noting any missing information. A printed blank application was provided to each Board member during this meeting. Ted proceeded to explain the various forms included in the application and the type of information that is the focus of each form.

It was noted that the UDRO is very thorough, which can be a blessing and a curse. There is a lot of detail in the ordinance, and Board members should be familiar with these details – the performance standards, etc. – to review applications fairly and thoroughly.

Rob noted that one thing he took away from the webinar training that he watched is that if anything in the ordinance is ambiguous or poorly written and the Board is unsure how to interpret the standard, then the Board should find in favor of the property owner.

Ted mentioned that he is hoping to create an additional form to be added to the application; form 10.5, which would be the Performance Standards, so they are a checklist for both the applicant and the Board. Some Performance Standards, such as Mineral Exploration, would not apply to most applications, and some, such as Noise, can take a lot of effort to meet the requirements if it is applicable. Ted will research if there are any Performance Standards which cannot be waived and make note of such if that's the case.

In summary, Ted noted that the Board should be careful about suggesting to an applicant how to remedy a noncompliance with the ordinance. The Planning Board's job is to apply the ordinance as written, and not advocate for the applicant. Discussion ensued regarding pre-application conference. Ted noted that if the applicant asks a question, then the Board can answer, but he cautioned about coaching or putting procedure in the applicant's mind even during the pre-application review.

It was also mentioned that when an application has gone stagnant for 6 months, perhaps a letter should be sent to the applicant letting them know that because the application has been stagnant for 6 months, it is now void.

The Board agreed that they should follow MMA's guidance.

### CEO Reports

- a) Joelle stated that she has been researching a few subdivisions that have become stagnant – if there is a phasing schedule, when did it end, etc. She's working through the enforcement side of the UDRO to create a letter notifying the property owner(s) that if they want to move forward with their development, then they will need to come back before the Planning Board. She reported that one property owner decided they no longer wanted to subdivide. They put the property back as one large parcel, and Joelle said that she has the plans showing the change.

### Open Discussion

- a) Ted asked Joelle to liaison with AVCOG, MMA or the Town attorney. The Planning Board, as the ordinance is now written, has provisions or requirements to review the completeness of a previously approved application. The Planning Board has been very cautious and has avoided talking about an application when the applicant is not in front of the Board. This inhibits the Board's ability to review an approved application in terms of the status of the project – is it still a valid application or has it expired. The Board would like confirmation that the Board can discuss the status of an approved application without having the applicant present. Joelle noted that she had talked about this topic with the Town's attorney and will search through her emails for that conversation.
- b) Ted added, per the standard conditions of approval, the Board should require a letter of completeness from the subdivider. Discussion ensued regarding Performance Guarantees and if/when/how much of that money we be returned to the applicant. It was noted that the Planning Board would deem the application void, and then the performance guarantee would be handled by the Selectboard as the enforcement arm. It was noted that there is one subdivision in Town that has exceeded the 18-month construction period.
- c) The group discussed the flood and how it affected the New River subdivision. Much of the property was flooded, but the units were above the flood level.
- d) The group discussed various fire ponds within the town, and who is responsible for the maintenance of those ponds.
- e) Ted recapped his presentation regarding the proposed revisions to the UDRO at last night's Selectboard meeting noting that the Selectboard was uncomfortable reviewing and voting on the proposed revisions before receiving input from the Town's attorney. Therefore, the matter is tabled until they receive the lawyer's input, which is expected to come on Monday, the 26<sup>th</sup>. Joelle noted that a public hearing is scheduled for Tuesday, March 19<sup>th</sup>, at the Grange Hall and a notice of the hearing has been sent to the local newspapers. It was noted that, per the Town's attorney, the intent of the public hearing is to get input from the Town's citizens as to the nature and construction of the amendments. The Town's attorney will write the language for the warrant.

**Next Scheduled Meeting** – Wednesday, March 6, 2024, at 6pm. Joelle noted that she will not be attending the next meeting.

**Adjournment** Ted moved that whereas he has given a large homework assignment to the Board to review the application forms and apply them against the future application before the Board, which will require the full two weeks before the Board's next meeting, he therefore, moved to adjourn the February 21<sup>st</sup>, 2024, Planning Board meeting and reconvene here on March 6<sup>th</sup> at 6pm. Bruce seconded. Motion passed with all voting in favor. The meeting adjourned at 8:05 PM.