

-NEWRY PLANNING BOARD
MINUTES OF BOARD MEETING
Wednesday, March 6, 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), Meredith Harrop (Alternate), Rob Kates (Alternate)

Members Late:

Staff Present:

Members & Staff Absent: Joelle Corey (Code Enforcement Officer)

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 of full Board members, all full Board members are eligible to vote. Meredith confirmed that she had listened to the recording of the February 21 meeting.

Previous Meeting's Minutes: The Board reviewed the previous meeting's minutes. **Bruce moved to approve the minutes of the February 21st, 2024, planning board meeting. Ted seconded.** During the discussion, Ted noted that there were some errors stated during the Training Session at the last meeting. Ted noted that the minutes of the Feb 21 meeting reflect what was stated during that meeting, and therefore the minutes would not be amended; however, Ted made the following correction statements for the record:

1. Once an application is deemed complete, the Board has 60 days (not 30) to approve, approve with conditions, or deny an application. The only exception to this timeline is if there is a public hearing, then the Board has 30 days from the date of the public hearing to approve, approve with conditions, or deny an application.
2. The above timeline can be extended if both the applicant and the Board agree to extend the 60-day period.
3. Once an application is presented to the Board, the Board has 30 days to find it complete. If it is deemed incomplete, there is no time limit for when the applicant can come back and resubmit the application.

Following that discussion, the motion passed with all voting in favor.

Business

- a) Shoreland Zoning Permit Application; The Pines at Sunday River; Pine Group LLC; agent is Main-Land Development LLC, Shane Howley, P.E.; Tax Map R12 / Lot O14: Ted noted that the application (#24-280, The Pines at Sunday River Condominium) comprises of two application – a UDRO application for major subdivision as well as a Shoreland Zoning Permit application, and that the applicant is covering the two applications with one submission. Ted then asked that the Board proceed down the Application Review Tracking sheet working toward deeming whether the applications are complete or incomplete.

As a statement of facts, Ted stated that whereas the Town of Newry, Maine, Planning Board (Planning Board) has the authority to approve, approve with condition, or deny proposed subdivisions as per the Unified Development Review Ordinance (UDRO), Section 1.C.1.; whereas UDRO Section 3.E. states that activities which are not commenced or substantially completed with the time limits provided in Section 3.E. shall be subject to a new application and the original approval issued under the UDRO shall be considered void; whereas The Pines at Sunday River, Planning Board application # 13-203 was approved by the Planning Board on December 4, 2013, and by UDRO Section 3.E. is now considered void. Therefore, Ted moved that the Planning Board has jurisdiction to approve, approved with conditions, or deny the Major Subdivision Application Renewal for The Pines at Sunday River, Planning Board application # 24-280 submitted to the Planning Board on March 6, 2024.

Gootsch seconded. During discussion, Ted explained that the current applicant, who is not the original applicant, had an approved application (#13-203) dated 12/4/2013, and that this past December was the 10th anniversary of that application's approval, and per the UDRO, that application is now void. Therefore, a renewal application must be submitted for Planning Board review if the project is to move forward. **The motion passed unanimously.**

As a statement of facts, Ted stated that whereas the Town of Newry, Maine, is authorized to regulate all land use activities that take place in the 100-year floodplain of the Bear River from Branch Brook to the Newry/Bethel line and the Sunday River and all land within 250 feet, horizontal distance, of the normal high-water line of any river, the upland edge of a freshwater wetland and all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream as per the Town's Shoreland Zoning Ordinance (the Ordinance); whereas Section 16.A.(3) of the Ordinance appoints the Town of Newry, Maine, Planning Board as an administrating body and agent of the Ordinance; whereas Section 16.B. of the Ordinance requires a person to acquire a permit prior to undertaking any land use activities within Shoreland Zoning; whereas Section 14 of the Ordinance designates the Planning Board as the administrating body responsible for approving, approving with conditions, or denying a Shoreland Zoning Permit application for a principal structure to be used as a multi-unit residential dwelling. Therefore, Ted moved that the Planning Board has jurisdiction to approve, approve with conditions, or deny the Shoreland Permit application submitted for The Pines at Sunday River, Planning Board application # 24-280, submitted to the Planning Board on March 6, 2024. Gootsch seconded. Discussion ensued regarding building within the shoreland zone. Following discussion, the motion passed unanimously.

As a statement of facts, Ted stated that whereas the Pines Group, LLC is the applicant for a major subdivision and shoreland zone permit application renewal for The Pines at Sunday River, Planning Board application # 24-280; whereas the Pines Group, LLC has presented to the Planning Board a quitclaim deed for the parcel of land proposed to be subdivided per the above application and that the presented deed has been recorded with the Oxford County Registry of Deeds in Book 5783, Page 249; whereas the Pines Group, LLC as acquired the development rights and special declarant rights which pertain to The Pines at Sunday River Condominium Declaration and such acquisition has been recorded with the Oxford County Registry of Deeds in Book 5783, Page 254. Therefore, Ted moved that the Pines Group, LLC has standing before the Planning Board to present The Pines at Sunday River, Planning Board application # 24-280. Gootsch seconded. Following discussion, the motion passed unanimously.

As a statement of facts, Ted stated that whereas the Planning Board has been presented a letter dated October 24, 2023, from Mr. Mereck Franklin, a principal of the Pines Group, LLC, in which Mr. Franklin grants agency to Main-Land Development Consultants, Inc. to obtain applicable federal, state, and local permitting including attending meetings, signing forms and generally representing project interests for The Pines at Sunday River development. Ted, therefore, moved that the representatives from Main-Land Development Consultants, Inc. have authorization to represent the Pines Group, LLC in matters pertaining to Planning Board application # 24-280. Bruce seconded. With no discussion, the motion passed unanimously.

As a statement of facts, Ted stated that whereas no member of the Planning Board has stated that they possess any bias nor conflict of interest towards the Major Subdivision & Shoreland Zone Permit application renewal for The Pines at Sunday River, Planning Board application 24-280, nor has the Pines Group, LLC, as applicant, challenged any member of the Planning Board as having any bias nor conflict of interest toward said application. Ted, therefore, moved that the Planning Board is free and clear of any bias or conflict of interest toward application # 24-280. Gootsch seconded. With no discussion, the motion passed unanimously.

Ted moved that as allowed by Section 10.B.6. of the UDRO, the Planning Board require the applicant to pay an additional fee of \$2,500.00 to aid the Planning Board in its review and that the Planning Board engage Gorrill Palmer Consulting Engineers, Inc. to carry out such aid. Bruce seconded. Following discussion, the motion passed unanimously.

Ted noted to the applicant that any additional documents or plans need to be submitted at least 10 days prior to the next meeting in order to be considered at the meeting.

Shane Howley of Main-Land Development Consultants, representing the Pines Group, LLC for The Pines at Sunday River project, explained that the project is a 38-unit condominium. He noted that due to the time lapse from the previous approval, they are submitting a new shoreland zoning application and a new major subdivision application. The project as approved today has 10 units (5 units exist and 5 are currently being built). The future phases will have an additional 28 units for a total of 38.

Discussion ensued between the applicant and the Board regarding the numbering of the phases, as well as what is already in existence (5 buildings and infrastructure), and what is currently being built (5 other buildings & infrastructure).

Shane noted that two of the road names have been changed from the previous site plan. The applicant was advised to check with the Town Office regarding 9-1-1 addressing to get approval for the road names.

The Board noted that it would make it much easier and less time consuming for the Board if the applicant would attach the supporting documents for each application form to the respective application form and annotate on the supporting documents the form and the item number that it supports.

The Board discussed their review of the application in terms of completeness. Rob and Bruce both noted that during their review, they noticed that on form 10.2, the district within Shoreland Zone was not filled out.

Ted distributed to the Board a memo regarding his findings after reviewing the application for completeness – listing items that need to be addressed. Those items were discussed and a copy of the memo (titled: Application 24-280, Submission Review; dated March 6, 2024) was provided to the applicant and will be attached to these minutes.

When asked about the copies of the five-year recertification of the Stormwater Management Plan which are required to be submitted to DEP, the applicant stated that they have one dated 2019 and noted that one needs to be done this year. The applicant was asked to provide a copy of the 2019 recertification to the Board.

The applicant was asked to provide a copy of the assessment of the site from their 3rd party inspector following the December 18, 2023, flood event.

Ted noted that the wetland survey that the application was based on was dated 2005, and he stated that there have been many changes in the wetlands. Therefore, a statement from the author stating that it still applies or re-do the wetland survey.

The FEMA maps referenced are also outdated and have been replaced with newer versions. The floodplain and shoreland zoning depicted on the site maps may need to be corrected if they were based on expired information.

The application fee has been paid with check # 119. Per a note from the CEO, a payment of \$2,975 was accepted; however, the renewal fee is actually \$322.20. The CEO will refund \$2,652.80 to the applicant.

The applicant noted that they can provide the \$2,500 escrow fee next week. They requested to delay the next review of this application until the first meeting in May (May 1st) so that all missing information can be gathered and submitted before the 10-day deadline.

Ted moved that the applicant has requested a delay in submittal of the application until the 1st of May and that the Board is in concurrence with that. Bruce seconded, and with no discussion, the motion passed unanimously.

CEO Reports

- a) None – Joelle is on vacation.

Open Discussion

- a) Ted distributed a handout regarding Administrative Notes on a Shoreland Zoning Applications. Ted noted that the Shoreland Zoning Ordinance establishes a 35-day window for determining an application complete or incomplete once it has been received by the Board. Once deemed complete, the Board has 35 days to approve or deny the application unless there is a public hearing, then they have 35 days from the public hearing to approve or deny the application.

Ted spoke of the details that jumped out at him as he started reading through this ordinance and suggested that other Board members read through this ordinance in preparation for reviewing upcoming Shoreland Zoning Permit applications.

The group discussed the various setback requirements or allowances for the four districts within the Shoreland Zone. It was noted that the Shoreland Zone is 250' measured from the high-water mark or upland edge of a wetland. There is a Land Use Table in this ordinance (page 10), which shows what is allowed in each district within the Shoreland Zone: Resource Protection, Limited Residential, Limited Commercial, and Stream Protection (which has a 75' setback within the 250' Shoreland Zone). Gotsch clarified that the Shoreland Zoning Ordinance only applies to the portion of a project that falls within the Shoreland Zone; the sections of a project outside of Shoreland Zone are not reviewed under the Shoreland Zoning Ordinance. It was also noted that floodplains are different; they are noted on the FEMA map and a FEMA permit would be required.

The Board reviewed and discussed other portions of the Ordinance – various wetlands, vernal pools, etc.

- b) Ted attended the Appeal Board hearing in Bethel last week for the Bethel Station Condominium project, which is a 38-unit project proposed to be built across from the carwash in Bethel Station. Ted stated that the Bethel Planning Board did not approve the project because it exceeded 2.5 stories. Ted spoke about Bethel's Subdivision Ordinance which was amended a year or two ago with a requirement that buildings be 2.5 stories or less and less than 35' in height. Ted stated that the developer changed the roofline to a gambrel roof and added dormers, and then argued that it now met the 2.5-story criteria. Ted noted that a half story is not defined in their ordinance. The group discussed the decision made by the Board of Appeals to reverse the Planning Board's findings and approve the project. The Newry group spoke of finding in favor of the applicant when the ordinance is ambiguous.
- c) The group discussed the UDRO Public Hearing schedule for Tuesday, March 19, 2024, at 5pm at the Grange Hall. This Public Hearing was scheduled by the Selectboard. Ted noted that the lawyer's edits have been incorporated into the draft, and that final draft is available to be downloaded from the Town's website. Ted spoke about the lawyer's changes. Ted stated that he plans to attend the Public Hearing as well as the Selectboard meeting that will immediately follow. It was noted that the annual Town Meeting, where citizens of Newry will vote on the UDRO amendments, is scheduled for May 14th.
- d) Discussion ensued regarding the timing of the elections for Planning Board officers. Per the Planning Board Bylaws, the election is to be held at the first meeting in April. It was noted that the Town has changed their fiscal year; the bylaws were last amended Dec 2, 2020.

Next Scheduled Meeting – Wednesday, April 3, 2024, at 6:00 pm (elections)

Following discussion, **Ted moved that the Board cancel the scheduled Planning Board meeting for the 20th of March and go to the next scheduled meeting which is the 3rd of April. Bruce seconded, and the motion passed unanimously.**

REMINDER: UDRO Public Hearing will be held March 19, 2024, at 5pm at the Grange Hall.

Adjournment Gootsch moved to adjourn the meeting; Ted seconded. Motion passed with all voting in favor. The meeting adjourned at 8:03 PM.

NOTE: Immediately after this meeting was adjourned, Ted received a text from the CEO stating that she had received a Shoreland Zoning Permit application to be reviewed by the Planning Board at the March 20th meeting. Therefore, the Planning Board will hold a meeting on March 20th.

APPROVED