

NEWRY PLANNING BOARD
MINUTES OF BOARD MEETING
Wednesday, July 17, 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), Ted Baker (Board Secretary),
Meredith Harrop (Alternate), Rob Kates (Alternate)

Members Late:

Staff Present: Joelle Corey (Code Enforcement Officer)

Members & Staff Absent: Bruce Pierce (Board Vice Chair)

Public Attendees: Bob Berry, Ron Savage, George Jordan

Call to Order: Chairman John Gauthier called the meeting to order at 6:34 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. **Ted moved to empower Rob Kates as a member of the Planning Board due to the absence of the Vice Chairman, Bruce Pierce. Gootsch seconded, and the motion passed unanimously.**

Previous Meeting's Minutes: The Board reviewed the previous meeting's minutes. **Ted moved to approve the minutes of the July 3rd Planning Board meeting as drafted. Gootsch seconded. With no discussion, the motion passed with all voting in favor.**

Business

- a) **Review Plans and Application #24-280, Shoreland Zone and Major Subdivision UDRO applications for The Pines at Sunday River; Pine Group LLC; Agent is Main-Land Development Consultants, Bob Berry, President and Senior Chief Engineer – Tax map R12 / Lot 014:** Ted distributed a memo he wrote that was addressed to the Planning Board with the subject being: Proposed Phasing Plan, The Pines Condominiums (24-280), and dated July 17, 2024. Ted referenced the UDRO and explained his thoughts on the phasing timeline. He also spoke about the numbering of the phases – noting that the current plan does not include the building that is already built (originally numbered as Phase 1) nor the building currently being constructed (originally numbered as Phase 2) in its phase numbering. The current plan shows phases 1-3 for the remaining proposed buildings to be constructed. Following a lengthy discussion, it was decided that the numbering of the phases would stay as shown on the applicant's current plan.

Ted spoke about the phasing schedule and proposed, as noted in his memo, that the phasing plan mimics the timeline requirements of a normal subdivision. Ron explained that from a developer's perspective this would stretch out the process and possibly put a significant delay on the project. Generally, as one building is finishing up, the equipment begins working on the site for the next building. He spoke about the safety issue of having this requirement placed on a condo project where one building must be finished (and ready to be sold) before starting the next building.

Discussion ensued regarding the Performance Guarantee. Ted explained that a Performance Guarantee (which is detailed in Section 21 of the UDRO) protects the Town from ending up with a partially complete subdivision.

Following a long discussion, the group agreed that the phasing should change from that shown on the current plan to instead doing seven phases – one phase per building. With the prior discussion in mind and after reviewing the Phasing memo with the applicant, Ted suggested striking from the Phasing memo the two subparagraphs (3.b.1. and 3.c.1.), which begin "Construction may not commence prior to submission and acceptance of a letter of Compliance...".

Discussion ensued regarding item 3.d of the Phasing memo where it states that if construction of any phase is not started within the time allowed, then the application is considered void, and the subdivider must submit a new application to the Planning Board per Section 3.E. of the UDRO. The applicant noted that they feel that the Board is overstepping with this requirement when the permit approval would give the applicant 10 years to complete the phased project.

The group discussed at length where Section 21.G. under Performance Guarantee requires that the developer come back before the Board prior to the start of each phase as noted in the Phasing memo. Bob noted that he will go back and read that section of the Ordinance and ask that their attorney do the same. Ted clarified that because it's a phased development, the applicant would need to come back before the Board at the end of each phase to request that the Performance Guarantee be rolled over to the next phase. Bob pointed out that the Ordinance allows the Board to negotiate the Performance Guarantee and that not having the full project approved would be a burden on the developer.

Ted suggested to Bob that he read Section 22 of the UDRO.

Bob was asked to provide the Board with a Phasing calendar in time for the Board to review prior to the next meeting. Bob asked that any memos be provided to him prior to the next meeting if possible.

Copies of the Gorrill Palmer Engineering Review Memorandum were provided to the Board and applicant. Bob Berry distributed copies of his memo written in response to the GP Memorandum as well as a copy of plan C2.1 dated 7/16/2024. Bob reviewed his responses with the Board.

Ted had also distributed a memo with the subject: Conditions of Approval, The Pines Condominiums. Discussion ensued regarding item #2 that speaks to proper concrete washout procedures. Bob Berry noted that he and the applicant will ensure that the Conditions of Approval noted will be added to the plan in addition to the 6 that are on the plan dated 12/4/2013; Registry of Deeds Plan # 4963.

Ted had distributed a third memo addressed to the Board, dated July 17, 2024, with the subject: Performance Guarantee, The Pines Condominiums (24-280). Ted spoke about that because the subdivider has indicated that he will go for a conditional agreement as opposed to a traditional Performance Guarantee, that the agreement needs to be filed with the Registry of Deeds so that it is clear to any title company, real estate agent, and/or potential buyer, that a sale cannot occur until compliance has been issued to the Town. Bob noted that sometimes the Registry of Deeds declines to accept certain documents.

Bob asked if the applicant did not do a conditional Guarantee and instead was to use a bond for a financial Performance Guarantee, what would that amount be. Referring to the language in Section 21 of the UDRO, Ted explained that the amount would need to be adequate to cover all required improvements – required improvements are: any and all infrastructure improvements shown on the final plan includes but is not limited to roads, streetlights, potable water systems, fire protection, sewers, water treatment, stormwater management, utilities, and structures. The group discussed doing a Performance Guarantee per phase. Ted noted that when the applicant comes back before the Board following each phase, they would need to submit an updated estimate of construction costs detailed so the Town's consultant can confirm that it is an accurate estimate.

Bob stated that they will review the UDRO and come back before the Board with updated plans.

The group continued to discuss in great length the construction schedule and timeline for phasing.

Ted moved that the Board table review of this application 24-280 and resume this conversation on the 7th of August. Ted added that the applicant should submit their proposed phasing to the Town plan by July 24th. The applicant asked if there was anything else he should be prepared to discuss. Discussion ensued regarding

Shoreland Zone portion of this application. Ted noted that the Board will need to move on this application (approve/deny/or approve with conditions) by the Board's meeting on August 7th to meet the 30-day requirement set by the Ordinance unless it is mutually agreed upon by both parties to extend that deadline. Ted noted to the applicant that he would like to see the applicant settle on a Phasing Plan and is more concrete than "as economic conditions permit", and he added that the Conditional Agreement will need to be submitted in writing noting that a letter of compliance from the applicant has been submitted to the Town and accepted by the Town and the letter will need to outline what is considered substantially complete. **Gootsch seconded the motion to table the review of project 24-280 until the 7th of August. The motion passed unanimously.**

As a point of order, given that the time is 20:30 and that the Board has expired the Board's two-and-a-half-hour allotment of time, Ted moved that the Board extend the meeting for 30 minutes to 9:00 or sooner if so desired (no more than 30 minutes). Seconded by Gootsch. The motion passed unanimously.

The application will be added to the Board's next agenda.

Findings of Fact

- a) **The Colony Development Co., LLC; Subdivision Amendment Application #24-282: Gootsch moved that the Board approve the Findings of Facts for Application 24-282, The Colony Development Co. LLC. Ted seconded. The motion passed unanimously.** The Chair proceeded to sign two copies of the document. One will be placed in the Town's files, and the other will be sent to the applicant.

CEO Reports

- a) Joelle stated that she has no reports that she can discuss at this time.

Open Discussion

- a) Joelle provided copies of the newly revised Planning Board Bylaws, which were approved at the Board's previous meeting, to all Board members so they may place the copy in their Planning Board binders.
- b) Joelle distributed and collected the forms allowing the Town to do background checks. The Town is requiring all Town employees and volunteers to sign & submit a copy of this form for the Town's records.
- c) Gootsch spoke of a project that took place in Hanover years ago that was very close to the Newry town line. He talked about how the developer suddenly left and abandoned the project. The project was left in an unsafe condition and stayed in that condition for years before it was sold, and another developer addressed the issue.

Next Scheduled Meeting – Wednesday, August 7, 2024

Adjournment Ted moved to adjourn the Planning Board and reconvene at 6 o'clock on the 7th of August and resume the application regarding The Pines. Gootsch seconded. Motion passed with all voting in favor. The meeting adjourned at 8:42 PM.