

**NEWRY PLANNING BOARD**  
**MINUTES OF BOARD MEETING**  
**Wednesday, August 7, 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:** Joelle Corey (Code Enforcement Officer)

**Members & Staff Absent:**

**Public Attendees:** Bob Berry, Ron Savage, Merek Franklin

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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:** Bruce completed the affidavit confirming that he has listened to the recordings and read the minutes from the July 17<sup>th</sup> Planning Board meeting and Public Hearing. Therefore, all full Board members are eligible to vote.

**Previous Meeting's Minutes:** The Board reviewed the July 17<sup>th</sup> meeting minutes. Ted stated that at that meeting and noted in those minutes he incorrectly used the term "traditional Performance Guarantee" and should have said "financial Performance Guarantee". **Ted moved to accept the minutes of the Wednesday, July 17, 2024, Planning Board meeting as written. Gootsch seconded the motion. With no further discussion, the motion passed with all voting in favor.**

The Board reviewed the minutes of the July 17<sup>th</sup> Public Hearing for The Pines at Sunday River Application # 24-280. **Ted moved to accept the minutes of the [July 17, 2024] Public Hearing as written. Gootsch seconded. Following 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:** Bob Berry introduced Ron Savage and Merek Franklin to the Board and proceeded to review the new, updated phasing plan with the Board. The new plan includes 8 phases – Phase 1 is the building that is already built; Phase 2 is the building that is currently under construction; Phases 3-8 are the remaining structures to be built. This new phasing plan covers one building per phase.

Bob stated that the updated plan shows the Conditions of Approval that the Board provided at the last meeting. It was noted that those Conditions of Approval have not yet been voted on by the Board, and the final Conditions of Approval must be written on the site plan – the plan that gets filed at the Oxford County Registry of Deeds.

Bob requested to use a conditional agreement as a performance guarantee – stating that each phase must have an inspection done and be certified as completed by the inspecting official before units can be actually conveyed. Bob stated that it is his hope that the Board can, today, approve the conditional agreement on all phases so that the applicant does not need to come back before the Board prior to the start of each phase – he feels that that the Performance Guarantee language in the UDRO regarding the applicant returning to the Board prior to each phase is tied to a financial guarantee and that with this conditional agreement, the financial guarantee is not an issue. He added that the applicant will submit the conditional agreement language to the Town prior to the start of construction of Phase 3. He proposed that no more than 3 phases be under construction at any given time; the

applicant clarified as an example that as one phase is in its final stages (paving, life safety inspections, etc.), perhaps a foundation would be started on the next phase, and they may begin to clear the next lot and install the well on a third phase. Discussion ensued between Board members and the applicant.

Ted stated that whereas the applicant has put forth a proposal for a conditional agreement that limits conveyance of any unit in a phase until that phase is complete, **Ted moved that the Board accept the conditional agreement in lieu of a financial performance guarantee. Bruce seconded. The motion passed unanimously.**

The Board confirmed that no waivers are being requested by the applicant.

The Board then discussed conditions of approval.

**Ted moved that a condition of approval for The Pines project #24-280 read as follows: no further division of lots shall be allowed without Town of Newry's Planning Board approval. Bruce seconded. With no discussion, the motion passed unanimously.**

**Ted moved for a condition of approval for The Pines Application #24-280 that condominium floor elevations shall be a minimum of one foot above the 100-year storm event base flood elevation, pursuant to the Town of Newry Unified Development Review Ordinance, Section 5.L. Bruce seconded. Following discussion, the motion passed unanimously.**

**Ted moved that a condition of approval for The Pines Application #24-280 be that this project is subject to the State of Maine Department of Environmental Protection (DEP) site location applicant order number L-23332-87-A-N. The developer shall comply with all DEP recommendations and conditions. Bruce seconded. Following discussion, the motion passed unanimously.**

**Ted moved that a condition of approval for The Pines Application #24-280 state that a third-party licensed professional engineer shall be required to perform project site inspections during site construction activities as dictated by the DEP approval order. Any report submitted to the DEP shall also be submitted to the Town of Newry Inspecting Official for review. Bruce seconded. Following discussion, the motion passed unanimously.**

**Ted moved for a condition of approval to The Pines Application #24-280 that a third-party Inspecting Official, other than the third-party licensed professional engineer required by the DEP approval order, shall be appointed by the Town of Newry Selectboard, and carry out any and all inspections allowed and called for in the Unified Development Review Ordinance (UDRO). The developer will establish an escrow account with the Town as detailed in UDRO Section 6.A.1.b. to cover the cost of the Inspecting Official. Bruce seconded. Lengthy, heated discussion ensued amongst the Board, the applicant, and the applicant's agent. Ted voted in favor; Bruce and Gootsch voted opposed. The motion failed.**

**Ted moved for a condition of approval for The Pines Application #24-280: as required by the DEP Site Location of Development Act approval, the developer, its successors, and, upon the expiration of the developer's control period, the homeowners' association will complete the five-year recertification of the stormwater management system and provide a copy to the Town. Bruce seconded. Following discussion, the motion passed unanimously.**

**Ted moved for a condition of approval to the application for The Pines Application #24-280 such that prior to the commencement of construction for any phase, all areas shown as:**

- a) stream setback, no disturbance forest buffer
- b) stormwater buffer, meadow
- c) stormwater buffer, limited disturbance/forested or
- d) wetland

on Plan C3.1 dated 5/16/2024 will be permanently marked and kept clear of all construction activity. Gootsch seconded. Following discussion, the motion passed unanimously.

Ted moved for a condition of approval for The Pines Application #24-280, the developer will submit as-built plans to the Town of Newry for all stormwater management, roads, and parking lots required improvements. Bruce seconded. Following discussion, the motion passed unanimously.

Ted moved for a condition of approval for The Pines Application #24-280, Phase 3 detailed on Plan C6.1 must be built. Phases 4 through 8 may be built. Gootsch seconded. Following discussion, the motion passed unanimously.

Ted moved that a condition of approval for The Pines project #24-280 read as follows: Phase 3 (Plan C6.1 dated 5/16/2024) shall include:

- a) Ashley's Way from Station 0 to Station 6 as depicted on Plan C2.1 dated 5/6/2024 and
- b) All of Lodgepole Lane (aka Foxtail Run, aka Micaela's Boulevard) including the parking areas for Buildings B1 and B2 as depicted on Plan C2.2 dated 5/16/2024 and
- c) The parking area for Building A1 on Plan C2.1 dated 5/16/2024.

Gootsch seconded. Following discussion, Ted withdrew this motion.

As a condition of approval for The Pines Application #24-280, Ted moved that:

**Phase 3 (Plan C6.1 dated 7/29/2024) shall include:**

- a) Ashley's Way from Station 0 to Station 6 as shown on Plan C2.1 dated 5/6/2024 and
- b) All of Lodgepole Lane (aka Foxtail Run, aka Micaela's Boulevard) including the parking areas for Buildings B1 and B2 on Plan C2.2 dated 5/16/2024 and
- c) The parking area for Building A1 on Plan C2.1 dated 5/16/2024; also

**Phase 4 (Plan C6.1 dated 7/29/2024) shall include:**

- a) Ashley's Way from Station 6 to Station 8-5 on Plan C2.1 dated 5/6/2024 and
- b) Tall Pine Drive (aka Sugar Lane, aka Hazel's Way) from Station 0 to Station 2 including the parking area for Building C1 (Plan C2.2 dated 5/16/2024); also

**Phase 5 (Plan C6.1 dated 7/29/2024) shall include Tall Pine Drive (aka Sugar Lane, aka Hazel's Way) from Station 2 to Station 3 including the parking area for Building C2 (Plan C2.2 dated 5/16/2024); also**

**Phase 6 (Plan C6.1 dated 7/29/2024) shall include Tall Pine Drive (aka Sugar Lane, aka Hazel's Way) from Station 3 to Station 6-10 including the parking area for Building C3 (Plan C2.2 dated 5/16/2024); also**

**Phase 7 (Plan C6.1 dated 7/29/2024) shall include Ashley's Way from Station 8-5 to Station 12-5 including the parking area for Building A2 (Plan C2.1 dated 5/16/2024); also**

**Phase 8 (Plan C6.1 dated 7/29/2024) shall include Ashley's Way from Station 12-5 to Station 14-5 including the parking area for Building A3 (Plan C2.1 dated 5/16/2024).**

Bruce seconded. With no discussion, the motion passed unanimously.

Ted moved for a condition of approval for The Pines Application #24-280 that all dwelling units shall have fire suppression systems installed according to National Fire Protection Association standards. Gootsch seconded. Following discussion, the motion passed unanimously.

Ted moved for a condition of approval to The Pines Application #24-280 prior to the start of all construction of each phase, the developer shall hold a pre-construction meeting. This meeting shall be attended by the developer's representative, the design engineer, the general contractor, all third-party inspectors, and the Town of Newry Inspecting Official. Bruce seconded. Following discussion, the motion passed unanimously.

Ted moved for a condition of approval for The Pines Application #24-280 stating conveyance of any unit is prohibited prior to the Town's acceptance of a Letter of Compliance from the developer for the phase the unit is part of. Bruce seconded. Following discussion, the motion passed unanimously.

Ted moved that a condition of approval for The Pines Application #24-280 read as follows: Application approval will be void after five years of inactivity of construction and alteration activities for which approval has been granted under the Unified Development Review Ordinance. Bruce seconded. Following discussion, the motion passed unanimously.

Ted moved for a condition of approval for The Pines Application #24-280 –the developer will ensure proper concrete washout procedures are followed as per Maine Erosion and Sediment Control Best Management Practices (BMPs), Manual for Designers and Engineers, Section A.6. Bruce seconded. Following discussion, the motion passed unanimously.

The Board proceeded to review and discuss the Performance Standards found in Section 13, beginning on page 65 of the UDRO, to ensure that any standards applicable to this application have been met. No motions were made during this review.

Following the review of UDRO Section 13, Bruce moved that the Board has reviewed Performance Standards for Application 24-280, The Pines at Sunday River, and found that they are in compliance to what applies to that application. Gootsch seconded. Following discussion, Bruce and Gootsch voted in favor; Ted opposed. The motion carries.

#### CRITERIA FOR APPROVAL FOR THE UNIFIED DEVELOPMENT REVIEW ORDINANCE (Section 5; pages 21-24)

- A. **Pollution** – It was noted that this project is out of the flood plain, the elevation of the first floors is at least one-foot above flood level, the soils have had soil test and are well marked, the slope of the land is near flat and will probably remain covered with pine needles which should result in the effluence that is running off from being muddy. It was noted that this project has the Sunday River on one side, Dug Brook on the other side, and wetlands in the middle. There is a 100' no-touch zone along the river and a 75' no-touch zone on Dug Brook. Therefore, **Gootsch moved that A., Pollution, has been met. Bruce seconded. The motion passed unanimously.**
- B. **Erosion** – It was noted that this project has been reviewed by DEP. Therefore, **Bruce moved that B., Erosion, has been met. Gootsch seconded. The motion passed unanimously.**
- C. **Traffic** – It was noted that this project was previously approved, and that the entrance has been in place since 2007. **Gootsch moved that C., Traffic has been met. Bruce seconded. The motion passed unanimously.**
- D. **Sewage Disposal** – It was noted that the applicant has designed subsurface wastewater systems for each cluster of buildings. **Bruce moved that Section D., Sewage Disposal, has been met. Gootsch seconded. The motion passed unanimously.**
- E. **Municipal Solid Waste Disposal** – The developer stated that Building 1 (the building that is complete) has its own dumpster and that construction dumpsters are being used onsite during the construction period. **Gootsch moved that Section E., Municipal Solid Waste Disposal, has been met. Bruce seconded. The motion passed unanimously.**
- F. **Aesthetic, Cultural and Natural Values** – Bruce moved that the criteria approval for number F., **Aesthetic, Cultural, and Natural Values, has been met. Gootsch seconded. The motion passed unanimously.**

- G. **Financial and Technical Capacity** – It was noted that the applicant has provided a letter stating financial capacity. **Gootsch moved that Financial and Technical Capacity has been met. Bruce seconded. The motion passed unanimously.**
- H. **Sufficient Water** – It was noted that the applicant has provided a water study. **Gootsch moved that H, Sufficient Water, has been met. Bruce seconded. The motion passed unanimously.**
- I. **Public Water Supply** – **Gootsch moved that Public Water Supply is not applicable to this project. Bruce seconded. The motion passed unanimously.**
- J. **Surface Waters** – It was noted that there is a no-touch zone within 100’ feet of the stream, a no-touch zone within 75’ of Dug Brook, an adequate amount of undisturbed forest land in the development, and the developer is not touching the wetlands. **Therefore, Gootsch moved that J., Surface Waters, has been met. Bruce seconded. The motion passed unanimously.**
- K. **Ground Water** – In regards to quantity, this project is on a sand and gravel aquifer and at least two of the existing wells are bubbling over, and in regards to quality, the subsurface wastewater disposal systems are designed for the number of bedrooms in these units. **Gootsch moved that K., Ground Water, has been met. Bruce seconded. The motion passed unanimously.**
- L. **Flood Areas** – It was noted that this project is not in a flood zone. **Bruce moved that L, Flood Areas, has been met. Gootsch seconded. The motion passed unanimously.**
- M. **Freshwater Wetlands** – It was noted that the wetlands are all mapped. **Bruce moved that the criteria for approval for M., Freshwater Wetlands, has been met. Gootsch seconded. The motion passed unanimously.**
- N. **River, Stream or Brook** – It was noted that the rivers and streams are noted on the map. **Bruce moved that criteria for approval for M., River, Stream, or Brook, criteria has been met. Gootsch seconded. The motion passed unanimously.**
- O. **Storm Water** – It was noted that this project has been approved by DEP for stormwater management. **Gootsch moved that O., Storm Water, has been met. Bruce seconded. The motion passed unanimously.**
- P. **Spaghetti-Lots Prohibited** – **Gootsch moved that Spaghetti-Lots, Section P., is not applicable to this project. Bruce seconded. The motion passed unanimously.**
- Q. **Municipal Services** – It was noted that the Town did not receive any negative replies from any municipal agencies. **Bruce moved that the criteria for approval for this application, Q., Municipal Services, has been met. Gootsch seconded. The motion passed unanimously.**
- R. **Lake Phosphorus Concentration** – **Gootsch moved that R., Lake Phosphorus Concentration, is not applicable to this project. Bruce seconded. The motion passed unanimously.**
- S. **Impact on Adjoining Municipality** – **Gootsch moved that S., Impact on Adjoining Municipality, is not applicable. Bruce seconded. The motion passed unanimously.**
- T. **Land Subject to Liquidation Harvesting** – **Gootsch moved that Section T. is not applicable to this project. Bruce seconded. The motion passed unanimously.**
- U. **Conformity with Local Ordinances and Plans** – **Gootsch moved that U., Conformity with Local Ordinances and Plans, has been met. Bruce seconded. The motion passed unanimously.**

**Ted moved to table this application #24-280 pending submitted of the final plan by the applicant for the UDRO and take this up at the next meeting. Bruce seconded. The motion passed unanimously.**

The applicant submitted a letter from Main-Land Development Consultants dated August 7, 2024, Subject: The Pines at Sunday River; Letter of Extension – requesting an extension to the project timeline to Sept 4, 2024.

**Gootsch moved that the letter be accepted as written to extend the timeline to September 4<sup>th</sup>, 2024. Bruce seconded. The motion passed unanimously.**

The applicant was told that the next Planning Board meeting is scheduled for August 21<sup>st</sup>.

### **CEO Reports**

- a) Third-party sign off for DEP info and Locke Summit Estates information: Joelle read from an email correspondence that she had with Rylan Bytnar of DEP with the Subject: 07192024 Report for Pines Sunday River, Newry, and dated August 1, 2024. The applicant and agent for The Pines Application # 24-280 was in attendance during the reading of this email.

### **Open Discussion**

- a) The role of a third-party inspecting official for the Town of Newry – Ted spoke of the role of a inspecting official representing the Town’s interest and the importance of that individual when the Town takes up applications. Ted noted his disappointment that the Board is not allowing the Town to sufficiently inspect the Pines project. He added that the CEO does not have the skills nor the time to inspect road construction. The third-party inspector for the DEP does not represent the interest of the Town and is not charged to enforce the UDRO and its requirements. It was noted that this has been required by a number of previous applicants recently, and those applicants have obliged.

**Next Scheduled Meeting** – Wednesday, August 21, 2024, 6pm at the Town Hall.

**Adjournment** Ted moved to adjourn; Bruce seconded. Motion passed with all voting in favor. The meeting adjourned at 8:10 PM.

APPROVED