

NEWRY PLANNING BOARD
MINUTES OF BOARD MEETING
Wednesday, August 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), Meredith Harrop (Alternate), Rob Kates (Alternate)

Members Late:

Staff Present: Joelle Corey (Code Enforcement Officer)

Members & Staff Absent:

Public Attendees: Ronald Savage, Merek Franklin, Robert Berry, George Jordan, Peter Roberts

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 moved to accept the minutes as written for the August 7th Planning Board meeting. Bruce seconded. With no discussion, the motion passed with all voting in favor.**

Executive Session

Ted noted that after consultation with the Town's attorney, an executive session is not a proper forum to discuss the subject. The subject must be discussed in an open meeting. Ted went on to state that it was brought to his attention that the Chair, the Vice Chair, and Mr. Ron Savage had a meeting in the parking lot after the adjournment of the Planning Board's meeting two weeks ago. It was noted that any meeting involving a Planning Board member and an applicant is highly irregular, and, since there were two Board members which constitutes a quorum, aggravates the situation and is a violation of the Freedom of Access Act. The Chair and the Vice Chair stated that for the record the contents of the discussion. Bruce stated that to his recollection he and Gootsch were discussing Bruce's car, and that Ron pulled up later to say thank you and that was all. Bruce stated that he does not recall any discussion pertaining to the meeting or any decisions or discussion that were made at the meeting. Gootsch confirmed that is his recollection as well. Both the Chair and the Vice Chair confirmed that they had no other meetings with the applicant outside the regular Planning Board meetings. Ted noted as a reminder it is improper, especially with a quorum of the Planning Board, to meet with the applicant.

Business

- a) **Continued review for 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:** Before proceeding with review of the application, Ted pointed out that this meeting is a working session of the Planning Board; it is not a public hearing, and as such, the public including the applicant, is allowed to attend the meeting, take notes of the meeting, take an audio recording of the meeting, and/or take a video recording of the meeting. However, the public, including the applicant, are not members of the Planning Board and may not take part in the deliberations of the Planning Board. Ted asked the Chair to strictly adhere to that policy. Discussion ensued amongst the Board.

Ted moved to reconsider the appointment of an inspecting official. Gootsch seconded the motion. During discussion, it was noted that the Planning Board Chairman received a letter from the Town's Code Enforcement Officer dated August 13 [2024] RE: Reconsideration of Condition of Approval for a third-party inspector. The letter was read aloud for the record. Joelle added that she spoke with the inspecting official that is on site now for DEP,

and he confirmed that he was willing to be the third-party inspector for the Town. She also spoke with Gorrill Palmer, and they, too, are on board with being the Town's third-party inspector. The Board reviewed the definition of Inspecting Official and reviewed Chapter 6, Section A in the UDRO, which deals with inspections. As the group discussed this information, it was noted that other applicants have been held to this standard in recent history. The Board then reviewed Section 10.B.12.d. of the UDRO. Following discussion, **the motion passed with both Gootsch and Bruce voting in favor of reconsideration; Ted abstained.**

The Board continued to discuss the appointment of an inspecting official.

Ted moved as a Condition of Approval a third-party inspecting official 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. Gootsch seconded. Following brief discussion, the motion passed unanimously.

The Board proceeded to discuss what the Planning Board would recommend to the Selectboard. There was consensus that the Board recommend that the Selectboard use the third-party inspector currently being used by DEP (SJR Engineering) on this project via a memo to the Selectboard at their next meeting, Sept 3rd. The CEO offered to type the memo for the Board. The Chair and the CEO will meet to get the wording for the memo. It was suggested that the memo include the pros and cons for both third-party inspectors – SJR Engineering and Gorrill Palmer – to help the Selectboard make their decision. It was clarified that the scope of the Town's third-party inspector would be to carry out any and all inspections as required by the UDRO.

Gootsch moved that the Conditions of Approval stated at this meeting and previous meetings and approved by the Board apply to both the Shoreland Zoning Application and the UDRO Application. Ted seconded. The motion passed unanimously.

The Board proceeded to review the Land Use Standards (Section 15) in the Shoreland Zoning Permit Ordinance.

During this presentation of the updated site map, Bob Berry explained that portions of Building B1, which consists of units 1 through 5 (aka Phase 3), fall within the Shoreland Zone – some in Resource Protection and some in Limited Residential. Also, in the Shoreland Zone is a portion of the septic system for Building A2 (aka Phase 7).

Section 15, Land Use Standards (pages 11-28):

- A. Minimum Lot Standards – **It was noted that there are 5 units inside the 250' zone, and there is 1,080 feet of shore frontage on the lot so the requirement of 200' of frontage for each dwelling unit is met. Bruce moved that the residential dwelling units meet the minimum lot standard as required by the Shoreland Zoning Ordinance. Ted seconded. Following discussion, the motion passed unanimously.**
- B. Principal and Accessory Structures – **It was noted that the buildings are not in a flood zone, and there is a condition of approval that requires the buildings to be 1 foot above flood elevation, and that the other aspects of this section do not apply. Therefore, Bruce moved that Principal and Accessory Structures as outlined in Section 15.B. is in compliance. Gootsch seconded. The motion passed unanimously.**
- C. Piers, Docks, Wharves, Bridges and Other Structures and Uses Extending Over or Below the Normal High-Water Line of a Water Body or Within a Wetland, and Shore Stabilization – **Ted moved that Section C., Piers, Docks, Wharves, Bridges, and Other Structures and Uses Extending over or Below the Normal High-Water Line of a Water Body Within a Wetland, and Shoreline Stabilization; Section D., Campgrounds; Section E., Individual Private Campsites; and Section F., Commercial and Industrial Uses, do not apply. Gootsch seconded. The motion passed unanimously.**
- D. Campgrounds – *see motion above*

- E. Individual Private Campsites – *see motion above*
- F. Commercial and Industrial Uses – *see motion above*
- G. Parking Areas – **Gootsch moved that Sections G, H, and I are not applicable to this application. Bruce seconded. The motion passed unanimously.**
- H. Roads and Driveways – *see motion above*
- I. Signs – *see motion above*
- J. Storm Water Runoff – **Whereas the applicant has received and obtained a Department of Environmental Protection site location application order, # L-23332-87-A-9, Ted moved that Storm Water Runoff, Section J., has been met. Gootsch seconded, and the motion passed unanimously.**
- K. Subsurface Wastewater Disposal – **It was noted that a portion of one of the proposed septic systems encroaches into Shoreland Zone; it has been designed by a licensed site evaluator. The evaluation document is titled: The Pines at Sunday River, Newry, Maine, Table of Septic System Design dated 11.20.2023. It was noted that the septic system for Building A2 is outlined on that table. Gootsch moved that Section K., Subsurface Wastewater Disposal, has been met. Bruce seconded. The motion passed unanimously.**
- L. Essential Services – **Ted moved that Section L., Essential Services; Section M., Mineral Exploration and Extraction; and Section N., Agriculture, do not apply. Bruce seconded, and the motion passed unanimously.**
- M. Mineral Exploration and Extraction – *see motion above*
- N. Agriculture – *see motion above*
- ~~O. Timber Harvesting – REPEALED. [(AMD), R-06-08-21, ART. 4]~~
- P. Clearing or Removal of Vegetation for Activities Other than Timber Harvesting – **Ted moved that Section P., Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting; Q., Hazard Trees, Storm Damage Trees, and Dead Tree Removal; R, Exemptions to Clearing and Vegetation Removal Requirements; S., Revegetation Requirements; and T., Erosion and Sedimentation Control, are all Performance Standards relating to inspections and not review, and therefore, are not applicable at this time. Bruce seconded, and the motion passed unanimously.**
- Q. Hazard Trees, Storm-Damaged Trees, and Dead Tree Removal – *see motion above*
- R. Exemptions to Clearing and Vegetation Removal Requirements – *see motion above*
- S. Revegetation Requirements – *see motion above*
- T. Erosion and Sedimentation Control – *see motion above*
- U. Soils – **For the record it was noted that the applicant submitted a Class A High-Intensity Soil Survey titled The Pines at Sunday River, made for The Pines at Sunday River, created, published and developed by Darryl Brown, Certified Soils Scientist #9, dated October 2006. Given that the fact that the applicant has cited a high-intensity soil analysis dated 2007, Ted moved that Section U., Soils, has been met. Bruce seconded. The motion passed unanimously.**
- V. Water Quality – **Ted moved that Section V., Water Quality, is an enforcement standard, and therefore, not applicable for this review. Bruce seconded. The motion passed unanimously.**
- W. Archeological Sites – **For the record, the applicant stated that the survey submitted to the Board is Phase 1 Prehistoric Archeological Survey was performed for this project by TRC, submitted by James Park of TRC Custom Focus Solutions, dated January 28, 2006. Ted moved that given that the applicant has duly conducted a survey of archaeological records and significance of the site, and found none, that Section W., Archeological Site, has been met. Gootsch seconded. The motion passed unanimously.**

The Board proceeded to review Shoreland Zoning Criteria for Approval.

1. Will maintain safe and healthful conditions – **Gootsch moved that Permit # 24-280-SZ, has been looked at and will maintain safe and healthful conditions. Bruce seconded. The motion passed unanimously.**
2. Will not result in water pollution, erosion, or sedimentation to surface waters – **For the record, it was noted that the State of Maine Department of Environmental Protection, DEP Site Location Application Order # L-23332-87-A-N applies and covers this criterion. Gootsch moved that 2, will not result in water pollution, erosion, or sedimentation to surface waters. Bruce seconded. The motion passed unanimously.**
3. Will adequately provide for the disposal of all wastewater – **It was noted that there is only a portion of one septic system in the Shoreland Zone. Ted moved that the applicant has submitted septic designs that have been prepared by a licensed site evaluator and therefore, has provided proof that they will adequately provide for the disposal of all wastewater. Gootsch seconded. The motion passed unanimously.**
4. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird, or other wildlife habitat – **Ted moved that the applicant has provided proof through letters from different State agencies that the development will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat. Gootsch seconded. The motion passed unanimously.**
5. Will conserve shore cover and visual, as well as actual, points of access to inland waters – **Ted moved that as detailed in Plan S1.1, the applicant has demonstrated that they will conserve shore cover and visual as well as actual points of access to inland waters. Gootsch seconded. The motion passed unanimously.**
6. Will protect archeological and historic resources as designated in the comprehensive plan – **Ted moved as the applicant has already demonstrated, they have produced studies that show there is no archeological or historic resources to be impacted by this development, and therefore they meet the criteria that they will protect archeological and historic resources as designated in the comprehensive plan. Bruce seconded. The motion passed unanimously.**
7. Will avoid problems associated with flood plain development and use – **Ted moved that the project as shown on Site Plan S1.1 is not in a designated flood plain, and therefore, the applicant is avoiding problems associated with flood plain development and use. Bruce seconded. The motion passed unanimously.**
8. Is in conformance with the provisions of Section 15, Land Use Standards: **Ted moved that the Board has previously reviewed the provisions of Section 15, Land Use Standards at this meeting, and having found none, Ted moved that the applicant is in conformance with Section 15, Land Use Standards. Bruce seconded. The motion passed unanimously.**

Ted moved that the Board give conditional approval to Applications 24-280 both UDRO and Shoreland with the following conditions:

- 1) **No further division of lots shall be allowed without Town of Newry Planning Board approval.**
- 2) **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.**
- 3) **This project is subject to the State of Maine Department of Environmental Protection (DEP) site location application order number L-23332-87-A-N. The developer shall comply with all DEP recommendations and conditions.**
- 4) **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 DEP shall also be submitted to the Town of Newry Inspecting Official for review.**
- 5) **A third-party inspecting official 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.
- 6) 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.
 - 7) Prior to the commencement of construction of 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. wetlandon Plan C3.1 dated 5-16-2024 will be permanently marked and kept clear of all construction activities.
 - 8) Developer will submit as-built plans to the Town of Newry for all stormwater management, roads, and parking lot required improvements.
 - 9) Phase 3 detailed on Plan C6.1 must be built. Phases 4 through 8 may be built.
 - 10) Phase 3 on 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 5/16/2024 and
 - b. All of Lodgepole Lane (aka Foxtail Run, aka Micaela's Boulevard) including the parking areas for Buildings B1 and B2 as shown on Plan C2.1 dated 5/16/2024 and
 - c. The parking area for Building A1 as shown on Plan C2.1 dated 5/16/2024.
 - 11) Phase 4 as shown on Plan C6.1 dated 7/29/2024 shall include:
 - a. Ashley's Way from Station 6 to Station 8-5 as shown on Plan C2.1 dated 5/16/2024 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 as shown on Plan C2.2 dated 5/16/2024.
 - 12) Phase 5 (Plan C6.1 dated 7/29/2024) shall include Tall Pine Drive (aka Sugar Lane, ana Hazel's Way) from Station 2 to Station 3 including the parking area for Building C2 as shown on Plan C2.2 dated 5/16/2024.
 - 13) Phase 6 as shown on 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 as shown on Plan C2.2 dated 5/16/2024.
 - 14) Phase 7 as shown on Plan C6.1 dated 7/29/2024 shall include shall include Ashley's Way from Station 8 -5 to Station 12-5 including the parking area for Building A2 as shown on Plan C2.1 dated 5/16/2024.
 - 15) Phase 8 as shown on 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 as shown on Plan C2.1 dated 5/16/2024.
 - 16) All dwelling units shall have fire suppression systems installed according to National Fire Protection Association standards.
 - 17) Prior to the start of construction of each phase, the developer shall hold a preconstruction 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.
 - 18) 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.
 - 19) 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.
 - 20) The developer will ensure that proper concrete washout procedures are followed as per Maine Erosion and Sediment Control Best Management Practices (aka BMPs), Manual for Designers and Engineers, Section A.6.

With those conditions of approval, Ted moved that the Board approve Application 24-280 for the UDRO and for Shoreland Zoning with conditions. Bruce seconded. The motion passed unanimously.

The applicant stated that he will bring to the next meeting the final, signed application, as well as the final plans with the Conditions of Approval as written in the record for the Board to sign.

As the time for this topic was ending, Bob Berry asked to share a few things with the Board. The thanked the Board for their time, asked that if the CEO has any questions, comments, or issues with one of Main-Land's staff, that the Town contact him instead of talking to the staff or any of the Main-Land clients, and spoke of the Planning Board not allowing the applicant to express their opinions during the Board's review. In response, Ted noted that the applicant's comments regarding the requirement for an inspecting official for the Town could be taken as putting pressure on the Board during a vote. Ted added that no where in the ordinance is the Planning Board tasked to take into consideration the financial burden of an applicant. It was also noted that the review process took much longer than it should have because lengthy discussions were allowed between the applicant and the Board. It was also suggested to Main-Land that when an application is submitted that it be organized with the supporting documentation for each section of the application be attached to the pertaining section.

For the record, the audio recorder was paused while the Board took a brief intermission between agenda topics.

- b) **Sunday River Preliminary Meeting for bathroom building in Jordan basin, Tax Map R12/Lot 026; Carson Deeds or Peter Robets representing Sunday River Resort:** Peter Roberts, representative for Sunday River Skiway Corporation, spoke about the draft Site Plan application created for this pre-application meeting and explained the proposed project stating that the ski resort plans to build 660 sq foot commercial building located in the Jordan Basin to house permanent bathrooms with permanent plumbing. There is increased activity in this area with the addition of some food venues. The portable toilets used these past few ski seasons did not work out as intended. This building will be on the east side of the Jordan Basin in a cleared area between Lift 13 (Jordan Mountain Double) and the access road that goes to Aurora Basin. It was noted that Lift 14 shown on the Plan is the Jordan Bowl Express.

The applicant and the Board proceeded to go through the items of the draft application one-by one. The applicant was asked to attach any supporting documents for each form be attached directly behind the form for which it pertains (i.e. attachments for 10.1 should be directly behind 10.0, and the attachments for 10.2 should be directly behind that section, etc.), and that the requirement for which the supporting document meets be notated on the supporting document. This will help the Board during their review process. Further discussion on this topic continued.

It was noted that if the applicant does not request a submission waiver for an item, then the Board must consider it during their review. Peter spoke of the two columns on the application titled "Attached" and "Not Applicable" and asked if a waiver must be requested for any items checked as "Not applicable" or can he just explain why it is not applicable. Discussion ensued. It was decided that applicants could attach a sheet (or more if needed) listing each item that they believe is not applicable with a short, written explanation next to each item as to why the applicant feels it doesn't apply.

The Board continued to respond to questions from the applicant for his preparation of this application.

At 8:28, Gootsch moved to extend the meeting for one-half hour to 9:00. Ted seconded. The motion passed unanimously.

Discussion continued between Peter and the Board regarding the various line items of the draft application.

The Board asked the applicant to refer to the definition of structure on page 188 of the UDRO. Discussion ensued regarding temporary structures and the igloo. Peter asked when he submits an application for the igloo if it's possible for the permit to be approved for the same temporary structure to be built every year for the ski season.

The Board asked the applicant to submit a master plan. Peter noted that the plan changes nearly daily. Discussion ensued, and Peter explained how the State approves a site plan, and then amendments are reviewed and approved as needed. The group will discuss this topic further in the future.

CEO Reports

- a) Locke Summit Estates information update: Joelle stated that this update is not ready yet.

Open Discussion

- a) Chair – Ted spoke of Gotsch’s long and honorable service on the Planning Board – many years as Chair. He noted that in previous months it has become apparent that there hasn’t been preparation for running the meetings, which is resulting in disjointed meetings. Ted asked Gotsch to step down as Chair and allow the Board to hold elections at the Sept 4th meeting. Gotsch responded that he has felt the same – perhaps as the result of a previous medical condition.
- b) It was confirmed that Gotsch and Joelle will connect this coming Wednesday at 10am to work on the language for the memo to the Selectboard regarding the recommendation of a third-party inspector for The Pines project.

Next Scheduled Meeting – Wednesday, September 4, 2024, at 6pm -- Newry Town Office meeting room.

Adjournment Bruce moved to adjourn; Ted seconded. Motion passed with all voting in favor. The meeting adjourned at 8:47 PM.

APPROVED