

NEWRY PLANNING BOARD
MINUTES OF BOARD MEETING
Wednesday, October 16, 2024
Raymond C. Foster Municipal Building

Full discussion on the topics below is available on audio recording at the Newry Town Office.

Members Present: Ted Baker (Board Chair), Bruce Pierce (Board Vice Chair), John (aka Gootsch) Gauthier (Board Secretary), Meredith Harrop (Alternate), Rob Kates (Alternate)

Members Late:

Staff Present: Joelle Corey (Code Enforcement Officer)

Members & Staff Absent:

Public Attendees: Carson Deeds, Peter Roberts

Call to Order: Chairman, Ted Baker, called the meeting to order at 6:00 PM and read his opening statement.

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

Prior Attendance/Voting Eligibility: Gootsch, who missed the previous meeting, which was held Sept 18, 2024, confirmed that he has reviewed the materials submitted at that meeting, read the draft minutes and listened to the audio recording from that meeting, and has signed the affidavit stating such. Therefore, all three Board members are eligible to vote tonight.

Previous Meeting's Minutes: The Board reviewed the previous meeting's minutes. **Bruce moved to approve the minutes of the Wednesday, September 18th, 2024, Newry Planning Board meeting as written. Gootsch seconded. With no discussion, the motion passed with all voting in favor.**

Business

a) **Sunday River Resort, Yearly construction of Jordan Base Igloos, Map R12/026; Site Plan Application 24-284:** The Chair did a quick summary/introduction of this application and applicant noting that the resort is planning to expand its après ski hospitality offerings by adding a venue centered around temporary igloos. Each igloo may be up to 3,500 sq ft in size and may be interconnected with other igloos. The ground coverage of all igloos combined may vary from year to year, but will be between 2,500 and 30,000 sq ft. The building area will be restricted to the area known as Jordan Base Area or Jordan Basin.

FINDING OF FACT: Since the igloo(s) meet the UDRO definition of a Temporary Structure, a site plan review by the Planning Board is required (Reference: Application Form 10.2, Jordan Base Igloo Site Plan – sheet 2 of 2; UDRO 1.C.2. and the definition of a structure in UDRO 24.B.)

Bruce moved that the Newry Planning Board has jurisdiction for Application 24-284. Gootsch seconded. With no discussion, the motion passed unanimously.

The Chair listed the items included in the application submission, and it was confirmed that the applicant has signed the application forms: 10.1, 10.2, 10.3, and 10.4.

The Board was given copies of the following letters which provided notification regarding the proposed project:

- Letter from applicant to Newry's Deputy Road Commissioner – Joelle signed the copy acknowledging receipt and confirmed that she had no comment.
- Letter from applicant to Newry's Fire Chief – Alan Fleet signed the copy acknowledging he received it, and no comments were noted.

Carsen Deed, as Sunday River's Authorized Agent, submitted a letter dated Oct 16, 2024, to the Board requesting a waiver for the performance standard of lift safety and fire suppression (Section 13.AC of the UDRO).

The Board and the applicant discussed the application fee. Following the discussion, the application fee of \$50 was paid in cash. Joelle will provide the applicant with a receipt during business hours on Thursday, October 17th.

The applicant stated that they do not object with the alternates participating in the discussion during the application's review.

FINDING OF FACT: The proposed temporary structure will be constructed on the parcel of land identified on Tax Map R12 as Lot 26, which is approximately 1,550 acres in size. The applicant's parent company, Boyne USA, Inc., owns 444 acres of the parcel, and Boyne holds a long-term lease on the remaining 1,106 acres. The lease, commonly known as the Penley Lease, is on file at the Oxford County Registry of Deeds, Document 06218, Book 1095, Pages 114-123.

FINDING OF FACT: Sunday River Skiway Corporation is a duly chartered corporation in the State of Maine, Charter Number 19580111 D, and is in good standing per the Corporate Name Search Information Summary dated 8/1/2024.

Bruce moved that the applicant has standing. Gootsch seconded. With no discussion, the motion passed unanimously.

FINDINGS OF FACT: In regards to any bias or conflict of interest, Ted stated for the record that he is an employee of Sunday River Skiway Corporation; however, he does not have 10% or greater interest in the ownership of the corporation and therefore per 30-A M.S.R.A. Section 2605, he does not have a financial conflict of interest. He added that he also does not have any bias based on blood/marriage relationship or state of mind related to the applicant or party associated with the application. Bruce stated that he is not an employee of the corporation, and that he has no conflict of interest nor bias. Gootsch stated that he has not been an employee since December 1976, and he has no conflict of interest nor bias. Rob stated that he is not an employee of Sunday River; he has no conflict of interest nor bias, and Meredith noted that she is an employee of Sunday River, but she has no ownership, no conflict of interest and no bias. The applicant stated that he does not contest any members of the Board.

FINDINGS OF FACT: The Board will not engage with an outside consultant during the course of its review.

Gootsch moved that no additional fee is required for an outside consultant. Bruce seconded. With no discussion, the motion passed unanimously.

The applicant submitted a request for waiver of abutter notification. The Chair noted that Section 22.A in the UDRO allows the Board to grant waivers on application submission requirement and added that the UDRO definition for an abutter uses a 1,000-foot distance test around the applicant's parcel to establish whether an adjacent lot owner may be considered an abutter. Using the 1,000 from the building envelope, and not from the applicant's parcel, will result in no abutters. The Board discussed the topic of possible abutters within the parameters of this project.

Bruce moved that the Board grant the waiver for abutter notification. Gootsch seconded. The motion passed unanimously, and the abutter notification waiver was granted.

As an enclosure to Form 10.4, the applicant submitted a written waiver request for submission requirements for a performance guarantee noting that the project does not include roads, streetlights, potable water systems, fire protection, wastewater disposal and treatment, stormwater management, nor any other infrastructure that may be classified as "required improvements" by the UDRO.

The Chair noted that UDRO Section 21.A. stipulates that the Board may not grant waivers for a performance guarantee for major and minor subdivisions; however, it does not address site plans, and therefore, it is the Board's interpretation that a performance guarantee for a site plan may be waived.

Bruce moved that the Board grant the waiver requested by Skiway Corporation for the proposed project's performance guarantee. Gootsch seconded. The motion passed unanimously, and the performance guarantee waiver was granted.

Gootsch moved that Section 10.1 of the UDRO application is complete. Ted seconded. The motion passed unanimously.

Gootsch moved that Section 10.2 of the UDRO application is complete. Ted seconded. The motion passed unanimously.

Bruce moved that Form 10.3 complete. Gootsch seconded, and the motion passed unanimously. Following the passing of this motion, discussion ensued amongst the Board regarding the lack of dimensions of the building envelope on the map.

The applicant submitted a third written waiver request requesting that the performance standard for life safety and fire suppression (Section 13.AC) be waived.

Following discussion, Peter Roberts, Chief Engineer of Sunday River Skiway Corporation, stated that the applicant will research and abide by the NFPA exit standards.

Bruce moved that the Board grant the waiver request from the Sunday River Skiway Jordan Base Igloos for the life safety and fire suppression, Section 13.AC. Gootsch seconded. During discussion, the applicant stated that the seating is carved out of the snow & ice structure, that there are at least two exits. In regards to lighting, portable LED lights are used. Regarding lit exit signs, Peter stated that they would research into what is required for a temporary structure. With no further discussion on this waiver request, the motion passed unanimously, and the request to waive the performance standard for life safety and fire suppression was granted.

Gootsch moved that a site visit is not required. Bruce seconded. The motion passed unanimously.

Bruce moved that a public hearing is not needed for this project. Gootsch seconded. The motion passed unanimously.

The Board discussed the idea of requiring a Condition of Approval requiring exit signage. Following discussion, it was decided that this is a Code Enforcement issue, and therefore, the Planning Board will not require this as a Condition of Approval.

The CEO asked the applicant to share their inspection reports with her so she may keep them on file at the Town Office.

Bruce moved that the Planning Board finds no need for any Condition of Approval for this project. Gootsch seconded. The motion passed unanimously.

Bruce moved that Section 10.4 of the application is complete. Gootsch seconded. The motion passed unanimously.

For the record, the application has been deemed complete.

The Board proceeded to review Performance Standards in Section 13 of the UDRO for any standards applicable to this application. It was noted that the Performance Standard for life safety and fire suppression has been waived.

The applicant answered questions from the CEO regarding where the waste from the slop sinks would go. Peter stated that there would be no kegs, just bottles and cans. He added that there will be a handwashing sink with a gray water holding tank, which will be emptied in the new bathroom facility. No exterior lighting is planned on the igloo.

Gootsch moved that the Performance Standards required of the UDRO in Section 13 are in compliance, or do not apply, or in the case of 13.AC, has been waived. Bruce seconded. The motion passed unanimously.

The Board proceeded to review the Criteria for Approval.

CRITERIA FOR APPROVAL FOR THE UNIFIED DEVELOPMENT REVIEW ORDINANCE (pages 21-24)

- A. **Pollution** – FINDING OF FACT: the proposed temporary structures do not have any wastewater facilities and therefore, will not be generating any wastewater effluent; and therefore, it is in compliance with Section 5.A of the UDRO. Bruce moved that Section 5.A has been met, and Gootsch seconded. The motion passed unanimously.
- B. **Erosion** – FINDING OF FACT: These are temporary structures built out of snow and ice, and in existence for only 6 months during the winter (mid-November through mid-April); there is no soil erosion in the wintertime due to the ground being frozen or a reduction in the ability to handle erosion in the summertime. Bruce moved that Section 5.B is in compliance, and Gootsch seconded. The motion passed unanimously.
- C. **Traffic** – FINDING OF FACT: The proposal is for a temporary structure that will be accessible only by foot traffic (skiers & riders) on the ski trails; in addition, there is no road access to the igloos, and therefore, Traffic does not apply. Bruce moved that 5.C does not apply, and Gootsch seconded. The motion passed unanimously.
- D. **Sewage Disposal** – FINDING OF FACT: This is a temporary structure which does not have any wastewater infrastructure, and therefore Sewage Disposal does not apply. Gootsch moved that 5.D is not applicable. Bruce seconded. The motion passed unanimously.
- E. **Municipal Solid Waste Disposal** – FINDING OF FACT: The applicant has a contract with a local solid waste disposal hauler, and this facility will piggyback onto that contract, and therefore, the solid waste generated, which will be strictly hospitality waste, will be disposed of within an existing contract with a solid waste hauler. Therefore, Ted moved that Municipal Solid Waste Disposal is in compliance. Bruce seconded. The motion passed unanimously.
- F. **Aesthetic, Cultural and Natural Values** – FINDING OF FACT: Under Application 22-271, Jordan Lift, an approved application by the Newry Planning Board, and is in the immediate vicinity of this site plan, the Board did not find any conflict with aesthetic, cultural, and natural values. Therefore, Gootsch moved that Section 5.F has been met. Bruce seconded. The motion passed unanimously.
- G. **Financial and Technical Capacity** – FINDING OF FACT: The applicant has provided a letter from the General Manager of Sunday River Skiway Corporation stating that the project will be funded internally, and there is no indication that Sunday River is not able to meet those financial commitments, also Sunday River has within its employment two fine civil engineers – a licensed engineer and a licensed engineer in training, and therefore, there is plenty of technical capacity, also the applicant has contracted with ALPENIGLU whose business is to construct these igloos on a commercial basis at various ski resorts. Therefore, Ted moved that Section 5.G has been met and is in compliance. Gootsch seconded. The motion passed unanimously.
- H. **Sufficient Water** – FINDING OF FACT: The proposed temporary structure does not have any water system infrastructure in its design, and therefore, Sufficient Water is irrelevant and does not apply. Ted moved that Sufficient Water, Section 5.H, does not apply. Gootsch seconded. The motion passed unanimously.

- I. **Public Water Supply** – FINDING OF FACT: The proposed temporary structure does not have any water system infrastructure in its design, and therefore, Public Water Supply does not apply. Bruce moved that Public Water Supply does not apply. Gootsch seconded. The motion passed unanimously.
- J. **Surface Waters** – FINDING OF FACT: This project is not situated within the watershed of any pond or lake nor within 250' of any wetland, pond, or river, and the proposed development will not adversely affect the quality of that body of water nor the shoreline of that body of water. Bruce moved that Section 5.J, Surface Waters, is not applicable. Ted seconded. The motion passed unanimously.
- K. **Ground Water** – FINDING OF FACT: There is no subsurface structure to this temporary building, and no special snow is being made for this structure. Therefore, Gootsch moved that Section 5.K, Ground Water, does not apply. Ted seconded. The motion passed unanimously.
- L. **Flood Areas** – FINDING OF FACT: The elevation of the project site is above any designated flood areas, and therefore, Flood Areas is in compliance. Ted moved that Section 5.L, Flood Areas, is in compliance. Bruce seconded. The motion passed unanimously.
- M. **Freshwater Wetlands** – FINDING OF FACT: During Application 22-271, Jordan Bowl Lift Replacement, which covered the exact same areas this site plan application, freshwater wetlands had been identified and are not being infringed upon. Ted moved that Freshwater Wetlands is in compliance. Gootsch seconded. The motion passed unanimously.
- N. **River, Stream or Brook** – FINDING OF FACT: On Application 22-271 for the Jordan Lift two years ago, all rivers, streams or brooks were marked within this area, and this site plan does not infringe upon any of those areas, and therefore, Section 5.N, River, Stream, or Brook is in compliance. Bruce moved that Section 5.N is in compliance. Gootsch seconded. The motion passed unanimously.
- O. **Storm Water** – FINDING OF FACT: The stormwater management system for Application 22-271 carries over to this application due to its being in the same vicinity. Ted moved that Section 5.O, Storm Water, is in compliance. Bruce seconded. The motion passed unanimously.
- P. **Spaghetti-Lots Prohibited** – FINDING OF FACT: There is no adjustment to the lot line, and therefore, Spaghetti Lots does not apply. Bruce moved that Spaghetti-Lots Prohibited does not apply. Gootsch seconded. The motion passed unanimously.
- Q. **Municipal Services** – FINDING OF FACT: Section Q, Municipal Services, are not applicable because they are not impacted by anything this project is doing. Bruce moved Section Q, Municipal Services, is not applicable. Gootsch seconded. Joelle confirmed that she saw no impact on the fire department. The motion passed unanimously.
- R. **Lake Phosphorus Concentration** – FINDING OF FACT: The site location for this application is not within shoreland zone or within the watershed of any lake, and therefore, Section 5.R, does not apply. Gootsch moved that Section 5.R, Lake Phosphorus Concentration, does not apply because this project is not within the watershed of Howard Pond. Bruce seconded. The motion passed unanimously.
- S. **Impact on Adjoining Municipality** – FINDING OF FACT: The site plan does not impact on any adjoining municipality due to its location and distance from the nearest town line being greater than 1,000 feet, and this project will not generate any traffic. Therefore, Ted moved that Section 5.S, Impact on Adjoining Municipality, does not apply. Bruce seconded. The motion passed unanimously.
- T. **Land Subject to Liquidation Harvesting** – FINDING OF FACT: Given that the 5-year standard has been surpassed for liquidation harvesting, Land Subject to Liquidation Harvesting is not applicable. Ted moved that Section 5.T, Land Subject to Liquidation Harvesting does not apply. Bruce seconded. The motion passed unanimously.
- U. **Conformity with Local Ordinances and Plans** – FINDING OF FACT: The Sunday River ski area has been a recreational facility since 1959, well before the current Comprehensive Plan for the Town of Newry, and Sunday River is in compliance with all ordinances at this time, and therefore, the applicant does not have any outstanding violations of local ordinances, and the Board has already reviewed Section 13, Performance Standards, and found that the applicant is either in compliance with each standard, or certain standards do not apply, and one standard, specifically 13.AC, has been waived. Therefore, Ted moved that Section 5.U, Conformity with Local Ordinances and Plans, is in compliance. Gootsch seconded. The motion passed unanimously.

Bruce moved that the Board approve Application 24-284. It was noted that the Board applied no conditions of approval to this application. Gootsch seconded. The motion passed unanimously, and the application is approved.

The audio recorders were paused as the Board proceeded to sign 3 copies of the final plans.

The recorders were turned back on following the signing of plans.

- b) **The Pines at Sunday River Conditional Agreement review and attorney's review remarks:** Joelle explained that she received a draft Conditional Agreement from local attorney, Mike Steven, on behalf of The Pines LLC. Joelle forwarded the draft on to the Town's attorney, Jim Katsiaficas, for review along with the Findings of Fact and the signed plans showing the list of conditions of approval. The red text shows Jim's edits. Joelle stated that Mike added an additional comment, which she forwarded along to Jim. However, there is a possibility that her email had been hacked and he did not receive that correspondence. She hopes to hear from Jim on Monday or Tuesday, Oct 21 or 22.

Ted noted that Condition of Approval # 13 of the Pines Subdivision application states that conveyance of any unit could not occur until the town accepts a letter of compliance from the applicant. That is supported by UDRO 21, Performance Guarantees, that allows an applicant to substitute a conditional agreement in lieu of a financial Performance Guarantee. The applicant prepared a Conditional Agreement through their lawyer and submitted it to the Planning Board. However, the Planning Board does not have the authority to enter into a Conditional Agreement for the Town, and therefore, the Conditional Agreement needs to be reviewed and approved by the Select Board. The Select Board may or may not look to the Planning Board for its opinions and recommendations on how to proceed. Ted spoke about some other discussion between the Town's attorney and him via email that took place regarding this agreement. The agreement is currently with the Town's attorney for review.

Ted summarized that the take-away on this is that the simplified wording used in the condition of approval, which is the applicant shall not convey any unit until the phase that that unit is a part of is found complete by the Town accepting the letter of compliance, was too simple to meet the legal requirement of a conditional agreement between two parties, and therefore the lawyers working on the document. Ted added that the condition of approval specifically stated the applicant needed to submit a letter of compliance; however, Section 6 of the UDRO under Inspections, states that it is the inspecting official that determines when a phase is complete. In this case, the inspecting official is a third-party inspector. Discussion continued regarding completion of phases in this project as well as for potential future phased projects. The Board also discussed how any future Conditional Agreements should be handled.

CEO Reports

- a) Locke Summit Estates information update: None

Open Discussion

- a) Maine Municipal Association webinar on Freedom of Access Act is scheduled for Dec 4th.
b) AVCOG Planning Day & Housing Summit at Black Mountain in Rumford is scheduled for Nov 6th.

Next Scheduled Meeting – Wednesday, November 6, 2024. It was noted that if no new business is received by the 23rd, then the Board would cancel the Nov 6th meeting and meet on Nov 20th.

Adjournment – Bruce moved to adjourn October 16th Newry Planning Board meeting; Gootsch seconded. Motion passed with all voting in favor. The meeting adjourned at 8:09 PM.