



Town of Gorham
May 2, 2011
PLANNING BOARD MINUTES

LOCATION: Burleigh H. Loveitt Council Chambers, 75 South Street, Gorham, Maine

Members Present:

EDWARD ZELMANOW, Chairman
CHRISTOPHER HICKEY, Vice Chairman
THOMAS FICKETT
ANDREW MCCULLOUGH
COREY THERIAULT

Staff Present:

THOMAS POIRIER, Town Planner
BARBARA SKINNER, Clerk of the Board

Members Absent:

GEORGE FOX

Edward Zelmanow, Chairman, called the meeting to order at 7:00 p.m. The Clerk called the roll, noting that Mr. Fox was absent. Mr. Zelmanow welcomed new Board member Corey Theriault.

APPROVAL OF THE APRIL 11, 2011 MINUTES

Andrew McCullough MOVED and Thomas Fickett SECONDED a motion to approve the minutes of April 11, 2011 as written and distributed. Motion CARRIED, 5 ayes (George Fox absent). [7:02 pm.]

COMMITTEE REPORTS

- A. Ordinance Review Committee - No report.**
- B. Streets and Ways Sub-Committee – No report.**

CHAIRMAN'S REPORT – Mr. Zelmanow reported that the Board is still short one member and expressed a hope that the Town Council will appoint a 7th member in time for the July meeting.

ADMINISTRATIVE REVIEW REPORT

Mr. Poirier reported that the request of Pine Crest Bed and Breakfast for two additional guest rooms was approved by the Site Plan Review Committee; staff is moving forward to get those plans signed and recorded so construction can begin. Staff has sent comments back to Champagne's Energy and is awaiting a revised submission.

ITEM 1 CONSENT AGENDA -Preliminary and Final Subdivision Amendment request of Alan and Ruth Tarkinson to the Forest Estates Subdivision to revise the rear setback of Lot 3 from 50 feet to 20 feet, reducing the building setback by 30 feet, Map 21, Lot 4.10, located in the Suburban Residential district.

Mr. Zelmanow explained the procedures for consideration of Consent Agenda items. Mr. Fickett raised a point of order about the requirement for a motion to permit preliminary and final subdivision approval in one meeting and was advised by Mr. Poirier and Mr. Zelmanow that inasmuch as this is a subdivision amendment, it is not necessary to waive the rules to permit preliminary and final approval in one meeting.

Since there was no one on the Board or from the public who wished to remove the item from the Consent Agenda, and the applicant was in agreement with the Conditions of Approval,

Thomas Fickett MOVED and Andrew McCullough SECONDED a motion to grant approval of the item on the Consent Agenda with conditions of approval posted prior to the meeting and discussed with the applicant. Motion CARRIED, 5 ayes (George Fox absent). [7:11 p.m.]

ITEM 2 PUBLIC HEARING – Site Plan Review— East Coast Communication, request for approval to construct a 7,000 sq. ft. commercial building to contain office and shop space together with 16,000 sq. ft. of associated pavement for parking and access driveways and 3,000 sq. ft. of gravel storage areas; on 2.9 acres in the New Portland Parkway Subdivision, Map 29, Lot 2.008, located in the Industrial Zoning district.

Mr. Poirier gave an overview of the application, noting that the applicant was last before the Board at its April 11, 2011 meeting. Since that time the Board held a site walk on April 27, 2011; a copy of the site walk notes are included in the Board's packets. Site plan reviews require public hearings; this is the first review that the Board will have on this application and the Board should review the criteria in staff's notes and discuss them with the applicant.

Dan Riley, PE, Sebago Technics, appeared on behalf of the applicant and described the project. Mr. Riley addressed staff's and the Town's peer review engineer's concerns where outlined in the Approval Criteria in the staff notes of April 27, 2011, and said that a revised submission and plans would be made on May 3, 2011.

The Board discussed the proposed lighting with the applicant, ultimately agreeing that there will be no pole-mounted fixtures, there will be no lighting for the site's sign, and that all lights shall be full-cut off fixtures on the building, with the exception of the 250 watt floodlight to illuminate the gravel storage area. Mr. Zelmanow noted that the current plan does not show where the storage area is to be located. He also confirmed that a plan note will state that the gravel surface may be paved in the future. Mr. Riley confirmed that gate details will be on the revised plans that are submitted.

Mr. Riley advised Mr. Zelmanow that all the required sign information is attached to the application. Mr. Poirier confirmed that the sign meets the requirements of the Ordinance.

At the recommendation of Mr. Theriault, the Board discussed the issue of adding additional buffering behind the building to screen the dumpster, with a recommendation that the proposed buffering of balsam firs, red maples and serviceberry bushes for Cyr Drive be continued around the corner of the building to the dumpster.

PUBLIC COMMENT PERIOD OPENED: Shawn Moody, 5 Elkins Road, expressed his support for the project, commenting that Gorham needs to provide affordable support to small start-up businesses.
PUBLIC COMMENT PERIOD ENDED.

The Board agreed that as staff has not yet seen the revised submission and plans and no findings of fact have been established, approval would not be possible this evening. Mr. Poirier said that staff would attempt an accelerated review of the revised submission with the goal of having the applicant return before the Board at a second May meeting on Monday, May 16, 2011. The major concerns to address will be those of the Fire Chief, erosion control issues, buffering, and the sign information.

ITEM 3 SUBDIVISION REVIEW - Preliminary Subdivision Review – Grondin Aggregates, LLC request for approval for an 11-lot cluster subdivision off Middle Jam Road on 27 acres formerly the Middle Jam Pit, Map 97, Lot 31 and Map 98, Lots 1, 2, and 6, located in the Rural Zoning district.

Mr. Poirier said that the Board held a site walk on April 27, 2011; site walk notes have been included in the staff notes. This application is a preliminary clustered subdivision review, so the Board will do both a preliminary subdivision review as well as looking at the cluster provisions.

Shawn Frank, Sebago Technics, came to the podium and introduced the applicant, Larry Grondin. Mr. Frank gave an overview of the project, saying that it is the applicant's intention to reclaim the pit with 3:1 slopes, loam and seed, and at the same time create a roadway approximately 1,400 feet in length to service 11 single family lots. The lots will be served by individual wells and subsurface sewage disposal systems and test pits have been excavated to ascertain that acceptable soils are on site. Electrical service will be underground. Mr. Frank showed the Board the proposed common open space to be utilized for passive recreation purposes. The slopes will be regraded to 3:1 to leave a 50-foot wooded buffer of the abutting gravel extraction operation along the abutting property line/Standish town line. A 50 foot right-of-way is proposed to the Standish line.

Mr. Frank said that he will meet with the Planner about the net residential calculations prior to final approval. He said that the 4 easements specifically referenced on the subdivision plan, they do not impact the net residential calculations and do not cross this parcel.

Mr. Frank said he met with the Fire Chief to discuss his concerns about the width of the proposed roadway, noting that with the 4 foot shoulders on either side of the 20 foot roadway, basically it will be 28 feet from shoulder to shoulder. Mr. Frank said he will flare out areas of the cul-de-sac entering and exiting to provide sufficient turning radii for emergency vehicles.

Mr. Frank said that all of the buildings will be sprinkled and no fire ponds are proposed. Two stormwater treatment ponds are planned to accept the majority of runoff from the uphill lots, and the peer review comments concerning the proposed underdrained filter beds will be addressed before final submission. Mr. Frank said that the homeowners' documents are being finalized regarding the ownership and maintenance of the open space. Initial discussions have been held with the Public Works Director about Middle Jam Road, and something specific about proposed improvements to that road will be forthcoming in the final submission, but at this time it looks as though the applicant may provide some ditching along the edges of the road for better drainage. There is a tentative plan with the Ventimiglia abutter to convey a buffer to protect their shallow well, and appropriate finalized paperwork will be provided to the Town prior to final.

The Board held an extensive discussion with Mr. Frank and Mr. Grondin about the cluster requirement for usable open space with proposed uses. Mr. Frank said that it is envisioned as passive space, generally a lawn area with perhaps benches and picnic tables. A question arose about access to the open space, and Mr. Grondin suggested that an access path to the common open space could be more specifically defined physically along Lot 1's property line with trees and rocks.

Mr. Theriault asked that the exclusion zones be put on the nitrate analysis plan. Mr. Zelmanow spoke about buffering the Plummer property, which is closest to the proposed roadway, and the legal easement necessary for that abutter to tie into the new road.

PUBLIC COMMENT PERIOD OPENED: Irwin Novak, 82 Middle Jam Road, discussed the possibility of cutting the buffer directly back to the property line, which would eliminate the treed buffer that currently exists. He said that the new slopes for the grading may actually reduce the buffers along the Town line side of this project, and the sound buffering of the neighboring pit at the Standish line would be reduced for the

residents of the subdivision as well as the residents along Middle Jam Road. He also asked whether the Ordinance addresses the quality of the drilled well water, the impact of the subdivision on the condition of Middle Jam Road with the paving it requires, and more appropriate common open space usage such as a sledding area and an ice skating area.

Mr. Poirier said that the Ordinance requires that the development “has sufficient water supply available for present and future needs as reasonably foreseeable” and that State law has water quality standards that safe drinking water must meet.

Mr. Frank said there have been initial discussions with the Public Works Director about Middle Jam Road, and while they do not propose to repave it, the applicant proposes that improving the drainage with ditching would be of greatest benefit to the Town when it does repave the road. Mr. Grondin told Mr. Theriault that they would follow up with the Public Works Director about drainage and truck trips. Mr. Grondin said that the majority of the materials are on site naturally, but materials that have to be provided would likely come from Grondin’s other location in Windham, with most of that travel occurring on Standish roads. With respect to Mr. Novak’s comments about the buffer, Mr. Grondin said they do plan to keep as much of that buffer as possible, the 3:1 slope has to be created under the Ordinance; if additional information needs to be provided about water quality, they will do so; a good portion of the open space is reclaimed slopes, there is some flat, and they will check that area to see if it is too wet.

PUBLIC COMMENT PERIOD ENDED.

At Mr. Hickey’s request, Mr. Poirier explained that the Ordinance, under net acreage, states: “Slope areas of 20 to 33% shall also be deducted unless the developer can demonstrate to the Planning Board’s satisfaction that these slopes will be used as part of the overall plan for development, that they are stable for structures, if so utilized, and that any slope development will minimize soil erosion and comply with Maine State Plumbing Code.” The Board needs to review those slopes and determine that they are part of the development and do not need to be deducted from the net residential density calculations. If the Board feels there are slopes that do not meet this criteria, then the applicant will be required to deduct those areas from his net residential density calculations. Mr. Frank said that historically 3:1 slopes have been demonstrated to be stable slopes and are part of a reclamation process that has been allowed to be utilized as part of the net residential area.

The Board then discussed at length the site’s high intensity soils map and the 20-33% slopes to be deducted in the net residential density calculations. Mr. Frank showed the Board which slopes had been deducted in their calculations, and said if the Board wishes, he will get more information from their soils scientist. Mr. Zelmanow confirmed that the cluster plan is still the better use of the site. Mr. Hickey said he did not believe he could support the application in its present state.

Mr. Poirier suggested that should the Board so wish, it should direct the applicant to provide more information about certain soils areas on the plan. The Board decided that preliminary approval is not possible this evening as it would like to see revised plans first, building footprints should be added to the plans with well exclusion areas and nitrate plumes shown, and it would like to see the Public Works Director’s final comments. The Town Attorney’s suggestion about land conveyances being completed prior to preliminary approval is a decision for the applicant to make.

Ten Minute Recess to 8:45

ITEM 4 - SUBDIVISION REVIEW - Preliminary Subdivision Review —Chase Custom Homes & Finance, Inc. request for approval for Sawyer Estates, a 42-lot cluster subdivision on 103.59

acres off South Street, located in the R/SR (Rural/Suburban Residential) district on Map 21 Lots 10, 16 & 17.016.

Mr. Poirier gave an overview of the project, saying that the proposal was last before the Board as a sketch plan in April of 2009 and for preliminary review in January of 2010. At that point the application was for 102 lots to be reviewed under the Development Transfer Overlay District. The Board held a site walk in May of 2010. Since that time there have been some discussions about sewer for the project, and the project is now a 42-lot cluster subdivision. However, the Board is reminded that only the hardship criteria of Gorham's Waste Water Ordinance is under sewer this evening, with the rest of the review to be conducted once the hardship criteria has been reviewed by the Board.

As this is the first hardship criteria request from an applicant since Mr. Poirier has been Town Planner, he asked the Town Attorney for the hardship criteria that the Planning Board should review. Staff also sent the applicant's information to Jay Hewett, who is an engineer with the Portland Water District, who has done extensive reviewing for the initial 102 lot subdivision, but has also had some involvement with the South Gorham sewer study.

Mr. Zelmanow reviewed the correspondence from the Town Attorney, summarizing her recommendations. The review will be conducted under Article IX, Section I, of the Waste Water Ordinance, which requires the connection of a subdivision to a public sanitary sewer if (1) the system has capacity, and (2) any part of the subdivision is located within 500 feet of a public sanitary sewer or the subdivision is located such that it can be connected to a public sanitary sewer without undue hardship. Mr. Zelmanow said the second part of that sentence, "the subdivision is located such that it can be connected to a public sanitary sewer without undue hardship," is where the Board will focus its review. Mr. Zelmanow said that the Town Attorney has defined "undue hardship" in part as "the land in question cannot yield a reasonable return unless the variance is granted." The phrase "reasonable return" has been defined by the courts in the variance context as "the practical loss of all beneficial use of the land," but in the context of the Waste Water Ordinance, the Board must determine whether the cost of installing sewer is so high that the property owner will not be able to get a return on the development if sewer is required. The Town Attorney set forth how the determination of costs will be done, an analysis of the impact of additional cost of installing sewer, and what a reasonable return actually will be. Based on the information and evidence provided by the applicant, the Board must determine that if the applicant complies with the Ordinance and install the sewer, will that be a hardship for them.

Les Berry, BH2M Engineers, came to the podium and introduced John Chase, owner/developer of the property. Mr. Berry said that on September 10, 2009, a preliminary subdivision plan was submitted with 102 lots on the site. It was a Transfer Development project that was discussed by the Board in January of 2010. Mr. Berry said that, after meetings with the Town and the Portland Water District, they were given approval to sewer the project with a pressure sewer system, basically collecting the sewage within the subdivision and sending it up Route 114 to Weeks Road. In the interim, however, they received word that the Town was conducting a South Gorham sewer study, so they put the project on hold until that study was completed last summer.

Mr. Berry said that after a number of meetings with the Town and the Portland Water District to discuss sewer options for the project, Town staff decided that a pressure sewer system would not be permitted in the development, but instead wanted the project to implement a portion of the South Gorham sewer study. However, since public sewerage is not economically feasible for the development, the applicant decided that the site has good soils for subsurface sewage disposal, so they have modified the size of the project and developed the current 42-lot cluster subdivision plan. Realizing that sewerage is the primary issue to be resolved before any other, they are asking for the Planning Board to grant their hardship request.

Mr. Berry showed the Board an overview of the project and its relationship to sewers in the area. He said there is a sewer in the Heartwood Subdivision at Starlit Way, some 1500 feet away, which this site abuts. That sewer goes to a pump station that serves the Heartwood development and the Middle School, but Mr. Berry said that the pump station is at capacity, with no room for this project without being reconstructed. Mr. Berry said that the value of the 42 lots in the currently proposed cluster subdivision is \$60,000 apiece, and using the cost values of the South Gorham sewer study and applying those to the portions of the public sewer the applicant would be required to build, a figure results of \$4.2 million, which translates to over \$100,000 per lot. The Portland Water District came up with a figure of \$2.465 million or \$59,000 per lot. Other costs such as land, engineering, permitting, road, water, electrical, stormwater, sales and profit would also have to be factored in. He said that development of this site can only happen on subsurface sewage disposal systems or another public sewer system alternative, which he does not believe is possible.

Mr. Zelmanow asked what would the costs per lot be for alternatives. Mr. Berry replied that for subsurface sewage disposal, the cost would probably be \$10,000 to \$15,000 per lot, which would be between \$420,00 to \$630,000 for the 42 lots. Mr. Theriault confirmed that the focus of Mr. Berry's costs are for installation.

Mr. Zelmanow asked where the basis for a figure of \$60,000 per lot came from, was there an appraisal done to show comparison prices among lots that have been sold recently in Gorham. Mr. Berry replied that lots have sold for this price in the Gorham area lately. Mr. Zelmanow asked if marketing the lots would be impacted by the presence of subsurface or public sewer; Mr. Berry replied that it would be \$5,000 more with public sewer and \$5,000 less with subsurface. Mr. Zelmanow said he would like to see something in writing detailing what lots have been selling for in the area, showing that lots with public sewer perhaps sell for \$60,000 and lots with subsurface selling for \$55,000 or whatever the price range is. Mr. Berry said that they could provide that data, but with the numbers so large would it make any difference.

Mr. Zelmanow said there is a need to reconcile the difference between the two sets of numbers; Mr. Berry replied that he can justify his number but he has no way of justifying the Water District's numbers.

Mr. Berry replied to a question from Mr. Theriault that the Town has indicated it does not want low pressure systems. Mr. Poirier said that the Town, based on the South Gorham sewer study, is looking at a comprehensive plan to have that entire area of Gorham gravity sewered instead of having competing sewer systems operating in the area. Mr. Poirier said he will request a memo from the Town to clarify why a low pressure sewer system is not desirable.

In response to Mr. Zelmanow, Mr. Berry said that with the 42-lot cluster plan, the rest of the site will remain as dedicated open space as 42 lots maximizes the net residential density under the zoning of the site. Mr. Hickey noted that in the Town Attorney's letter, the phrase "any part of the subdivision" needs to be clarified as the subdivision is within 100 feet of the end of a sewer but the applicant chooses not to put lots there, so if the language means any buildable lot of a subdivision, it should so state as the open space is part of the subdivision.

Mr. Berry said that expanding the Heartwood pump station would be an option, but that is not what the Town is asking the applicant to do. Mr. Zelmanow said that in meeting the two-part requirement of the Ordinance, part of the subdivision is located within 500 feet of a public sanitary system, but the applicant is saying that the system within the 500 feet does not have the capacity required. Mr. Poirier confirmed the pump station would need to be upgraded, but it is not clear whether that means the system itself does not have capacity or that pump station does not have the capacity.

Mr. Zelmanow and Mr. Berry discussed the meaning of the phrase "any part of the subdivision is located within 500 feet... or is located that it can be connected to such a public sanitary sewer without undue hardship" language in the Ordinance, Mr. Zelmanow saying it is a two-part test, that if there is capacity and you are within 500 feet, you connect; if you are outside 500 feet there has to be capacity to connect to without undue hardship.

Mr. Hickey said he does not believe that the Board has enough information to make a determination on the applicant's hardship request this evening, and therefore believes that the Board should give the applicant specific direction on what to provide to the Board. Mr. Theriault said it is environmentally and socially irresponsible for the Board not to try to find a way to put this to a publicly owned treatment works; therefore, the option of low pressure sewer system or whatever other alternatives might be should be revisited to make that happen. He suggested that clarification is needed as to why the Town does not want the low pressure sewer system.

Mr. Zelmanow confirmed that the Board needs financial information on septic versus sewer system, that the Town Attorney should be present at the next meeting to advise the Board on applying the appropriate section of the Ordinance, whether system capacity or hardship, and hopefully Mr. Hewitt can be present as well. The information the Board would like to see on the value of the real estate is to be provided by the applicant. Mr. Hickey suggested that the value of the lot should be clarified as to whether it is the value with or without a septic system. Mr. Zelmanow said it would be useful to know what the cost would be to replace or upgrade the Heartwood pump station to make it have capacity. Mr. Berry said that cost can be provided, but that it would be contrary to the direction given to them by the Town, and asked if the Town could address that as a viable alternative. Mr. Zelmanow suggested that the Town might do a memo for the Board on the Heartwood pump station issue.

The Board and Mr. Berry discussed the meaning of "reasonable return," with Mr. Zelmanow noting that the Town Attorney will be available at the next meeting to give the Board guidance as to what numbers the Board should be looking at and plugging in to the equation as to whether it will be an undue hardship.

Mr. Poirier noted that the Water District's figures are just to sewer the subdivision and the infrastructure to serve the subdivision, but do include some carrying costs, a 25% contingency and 25% engineering and permitting costs. Mr. Zelmanow confirmed that the cost comparisons for the hardship review must be on 42 lots with public sewer and 42 lots with subsurface septic, regardless of what the developer might do in the future if there is public sewer available.

PUBLIC COMMENT PERIOD OPENED: Arthur Handman, 63 Quincy Drive, expressed concern about having 42 septic systems close to his property and that a sewer solution be found other than septic systems. Mr. Chase answered a question from Mr. Handman that if in fact there were a sewer solution, he would go back to the original 100- plus lot development. Under those conditions, Mr. Handman urged that there not be an entrance on Starlit Drive; Mr. Zelmanow said that issue would be discussed at another time.

Thomas Collins, 17 Crestwood Drive, suggested putting the development at the other end of the development near the proposed second entrance. He said it is important to know the cost of the development, and expressed concern that he does not want his property to be surrounded by 42 septic systems.

Bill O'Connor, 6 Crestwood Drive, expressed concern about 42 additional septic systems impacting the 10 lots on Crestwood, the amount of runoff in that area and not adding septic water to the area.

Fred Robinson, 5 Keepaway, asked for an explanation of the hardship waiver, which was provided by Mr. Zelmanow. Mr. Robinson said the developer should have considered the expense of public sewer before buying the property.

Mr. Berry noted that nitrate studies have to be performed to verify any septic system locations, and that they would prefer to go with public sewer if it made economic sense, but there is nothing on the table with the Town at this time that works.

John Chase, owner and developer, noted that other costs are involved in addition to those for installation of the sewer itself, such as engineering, permitting, water, electrical. He spoke of the cost and expense he has already incurred, and asked for clear direction and guidance from the Planning Board, Town Council and the Planning Board. Mr. Chase also noted that he will not necessarily build on each or any of the lots in the development.

PUBLIC COMMENT PERIOD ENDED.

It was agreed that the issue will come before the Board again for discussion at the June 6 meeting.

OTHER BUSINESS - NONE

ADJOURNMENT

Thomas Fickett MOVED and Christopher Hickey SECONDED a motion to adjourn. Motion CARRIED, 5 ayes (George Fox absent). [10:00 p.m.]

Respectfully submitted,

Barbara C. Skinner, Clerk of the Board
_____, 2011

ITEM 1 CONSENT AGENDA -Preliminary and Final Subdivision Amendment request of Alan and Ruth Tarkinson to Forest Estates Subdivision

Approved
Conditions of Approval

1. That this approval is dependent upon, and limited to, the proposals and plans contained in this application and supporting documents submitted and affirmed by the applicants and that any variation from the plans, proposals and supporting documents is subject to review and approval by the Planning Board, except for minor changes which the Town Planner may approve;
2. That all applicable conditions of approval for Forest Estates Subdivision shall remain in effect; and
3. That these conditions of approval must be added to the subdivision plan and the subdivision plan shall be recorded at the Cumberland County Registry of Deeds within thirty (30) days of the Planning Board's endorsement of the final plan, and a dated mylar copy of the recorded subdivision plan shall be returned to the Town Planner.