

**LINCOLNVILLE PLANNING BOARD  
MINUTES OF MEETING  
August 26, 2015**

**PRESENT:** Chair Ron Moran; Members Scott Harrison and Dottie Lanphear; Alternate Member Jay Foster; and CEO Frank Therio

**ABSENT:** Member Dorothy Havey

The Chair appointed Mr. Foster to serve as a voting member for the evening's business.

The meeting of the Planning Board convened at 7:00 pm. These minutes are a summary of the Board's discussions. A video recording of the full meeting is available at the Town Office.

**1. MINUTES: July 29, 2015**

**MOTION by Mr. Harrison seconded by Mr. Foster** to approve the Minutes of July 29, 2015.

**VOTE: 4-0-0**

**2. SUBDIVISION: PREAPPLICATION MEETING MAJOR SUBDIVISION:**

**Harbor Pointe Phase II: Map 14 Lot 40: Route 1 and Harbor Pointe Drive  
James Munroe and Richard Nightingale:**

The Applicants were represented by Will Gartley of Gartley and Dorsky Engineering and Surveying who prepared the Plans and materials required for the Preapplication phase of review. (See Attachment 1 for a list of submissions.) Mr. Munroe was present, but it was Mr. Gartley who described the proposal and reviewed the Conceptual Plan with Board members.

4.5. Classification:

The Applicants have elected to propose a Conservation Subdivision. Mr. Gartley explained the three "triggers" listed at Article 4.5.1. Classification of Subdivision Design. that led the Applicants to a Conservation design from the beginning:

- a) The parcel is in a view-shed identified in the Comprehensive Plan: Although Mr. Gartley found the View Shed Map confusing, it is clear from previous reviews that this property is within a view-shed.
- b) The parcel contains open fields suitable for agricultural production. Again, Mr. Gartley found this requirement was not clearly defined.
- c) The parcel has critical wildlife habitat as defined by the Maine DOC ...

The parcel has no critical wildlife habitat so c) does not apply; the field has been hayed for years so does that mean that b) applies - he had a hard time figuring that out; and the view shed map was hard to figure out. Since the designation works for the Applicant they decided to go that way in any case.

4.3.1 Procedure: [At the Preapplication Conference] The applicant shall present the conceptual plan and make a verbal presentation...

Mr. Gartley proceeded to review the Conceptual Plan discussing the various items the Ordinance requires be shown on this Plan.

- The Application for Phase I of Harbor Pointe was submitted in 1999 under the former Comprehensive Plan and the former Subdivision Ordinance. This Application is submitted under the current Plan and the 2005 Subdivision Ordinance that is in effect at this time
- In 2000 the Applicants deeded the View Corridor to the inhabitants of the Town of Lincolnville as required by the Court to settle all remaining legal issues in the Town's suit against the Applicants. (A copy of that deed was provided.) Phase II is designed to comply with the requirements of the deed with regard to the 250' wide View Easement that cannot be built upon and also controls the heights of certain buildings adjacent to that easement
- They are certain from the information they had to identify protected wildlife habitat on the property that there are no critical habitat areas requiring protection
- Using the *National Wetlands Inventory Maps* they find that they have no wetlands of significance that require protection described by the Army Corps of Engineers. The State Subdivision Ordinance requires Applicants to use new Army Corps manual to identify wetlands specific to each site. This involves looking at the vegetation, the soils and the hydrology. The wetlands on this property will not appear to be wetlands to someone who does not know exactly what they are looking for -- they are not wet but they do meet the Army Corps standards. The houses and driveways will not impact the wetlands, but the road needs to cross twice to access Lots 21 - 27. This will require a permit, and they will be submitting that application to the DEP.
- None of the lots will be within the Shoreland Zone so those restrictions on reduced lot size do not apply to Phase II.
- The Applicants took advantage of the ability to reduce lot size in a Conservation Subdivision and created three lots less than the required 40,000SF minimum. They did not use the 20,000SF lot size provided for in the Ordinance, and the smallest of these three lots is just over 24,000SF with the other two at nearly 37,000SF.
- The calculations required to determine the percentage of land required to be set aside as conserved land in a Conservation Subdivision:
  - Lot 15 was created five years after the original Subdivision approval and that lot area has been deducted from the remainder land being divided here.
  - The entire parcel to be divided is 1,053,036SF
  - From the remaining land they deducted the view easement and existing and proposed roads to equal 30% of that figure -- 315,909SF. This is the amount required by the Ordinance to be set aside as conserved lands

However, the Applicants are proposing to set aside 329,086SF of conservation lands that buffer Route 1 and the northerly property line as well as the land on either side - and encompassing - the View Easement

- The Applicants then subtract this protected land from the total acreage of the remainder lot and divide it by the minimum lot size allowed. They did not take advantage of creating lots as small as 20,000SF and Mr. Foster does not believe they are even close to creating the number of lots they would be allowed had they done so
- The Applicants have to take the view-shed into consideration when locating building envelopes because of the deed restrictions. (Mr. Gartley showed the outlines of the conserved land where there will be no building and it includes most of that protected area.) The first step in defining the building envelopes - which are not shown on the Conceptual Plan - is to minimize impact to the wetlands on the lots. Then they will ~~is to~~ ~~first~~ locate septic fields hoping for gravity feed; then ~~to~~ locate the wells; and then they will ~~to~~ attempt to find a site for each home that will provide views of the bay
- After finding general locations for the building envelopes, they will add setbacks from the wetlands and describe a building envelope which leave the lot owners some flexibility in the actual placement of their homes. The Ordinance is not specific in this regard so they have interpreted it as they thought it could apply to this proposal
- A Homeowner's Association will *probably* own the Common Lands, but that has not been settled for certain
- The new road will be built to Ordinance standards and will most likely be owned by the lot owners using that road for access
- The Preliminary Plan will include 1' contours that they are confident will be as accurate as possible using the new LIDAR information
- Stormwater calculations will be provided and a separate Stormwater Plan submitted

Mr. Foster confirmed the following facts with Mr. Gartley for the record:

- The Board will be reviewing a Major Conservation Subdivision with 13 lots
- The property is within a Scenic View-shed described in the Comprehensive Plan
- The property is not within the watershed of a Great Pond and the Applicant will not be required to submit Phosphorus loading calculations
- The proposed roads will be constructed to the standards of the current Ordinance
- The Applicant has not submitted any requests for waivers. Mr. Gartley added that he may run into something in preparing the Preliminary Plan or the Final Plan, but that he has not run into anything yet that would suggest a request for a waiver.

4.3.2: Site Visit: The Board at the initial pre-application meeting shall schedule an on-site inspection ... within 30 days of the pre-application meeting:

The visit was scheduled for Wednesday September 16 at 5 pm; all members in attendance will be available.

*Discussion:* The Board discussed participation in the review process by Board members if they have missed the Site Walk (or another meeting during the review). The CEO did not believe that missing a Site Walk would disqualify a member from participating during review. He was aware, however, that missing a meeting where there was substantive discussion, and perhaps a vote, was another matter.

**MOTION by Mr. Harrison seconded by Mr. Foster** to ask Mr. Therio to obtain an opinion regarding the participation of members who have missed a meeting during review of a subdivision.

**VOTE: 4-0-0**

4.3.3. A Public Input and Discussion Meeting (PIDM): This meeting is required for all Major Subdivisions to be held on " the next scheduled Board Meeting prior to the formal acceptance of a Subdivision Application":

The PIGM was scheduled for the last Wednesday of the month -- September 30, to be followed by the review of the Preliminary Plan for completeness.

*Discussion:* The Board discussed the language of paragraph 4.3.3 and differed on the interpretation of the timing of the meetings. The Preliminary Plan must be submitted in advance of the meeting at which it is to be reviewed and the required fee paid. If submitting the Plan is considered "formal acceptance" then the two items cannot be placed on the same agenda. If the Plan can be formally accepted at the close of the PIGM and then reviewed without being heard at a separately advertised Public Hearing, the two items can be placed on the agenda for September 30. Review of the Preliminary Plan - if found sufficiently complete to move forward - would then take place on October 14. The Final Plan and Finding of Facts will then be placed on the agenda for November 11 so time-frames for submissions can be met.

If the two cannot be heard the same evening, the schedule of review of the Application will be pushed out an additional two weeks; the Applicants hope the formal process can begin on the 30<sup>th</sup>.

**MOTION by Ms. Lanphear seconded by Mr. Foster** to ask the CEO to obtain the opinion of either Town Counsel or the Maine Municipal Association about whether or not the two meetings can be combined.

**VOTE: 4-0-0**

The Applicant will have the site flagged as required for the Site Walk; and, the Applicant will post the required sign at the entrance to Harbor Pointe Drive giving the public two week's notice of the proposed subdivision. The Board agreed that a two-sided sign about the size of a real estate sign would be acceptable.

Mr. Foster recommended that members review the State Law Court's Decision regarding Phase 1 of Harbor Pointe Subdivision. He believes there is valuable information there about the importance of very carefully following Ordinance procedure.

Ms Lanphear asked that the packets for upcoming meetings be ready for members to pick up - with all materials included - on the Friday before the meeting.

There being no further business before the Board they adjourned at 9:00 pm.

Respectfully submitted,

Jeanne Hollingsworth, Recording Secretary

**ATTACHMENT 1: Harbor Point Subdivision Phase II Preapplication Meeting: August 26, 2015**

Article 4 4.1: Preapplication Meeting:

Fourteen (14) days prior to a meeting of the Board the Applicants or their representative shall request a pre-application conference. Such review shall not cause the plan to be a pending application ...

4.4 Submissions: The Applicant's submissions consisted of:

- Preapplication Conceptual Plan Application form;
- Letter from agent Will Gartley of Gartley and Dorsky Engineering and Surveying dated August 18, 2015 summarizing the proposal; and
- Release Deed from Richard Nightingale and James Munroe to the inhabitants of the Town of Lincolnville (Book 2002 Page 207) dated April 10, 2000

Article 4: 4.4.1 Submission Requirement: Conceptual Plan:

√ Plan SUB - Pre-Application Subdivision - dated August 12, 2015 was submitted

*The following are required to be shown where applicable:*

1. Streams:
2. Significant Wetlands:
3. 100-year Flood Plain:
4. Ridge Lines:
5. Public Roads & Trails:
6. Public Lands:
7. Existing Driveways & Roads:
8. Easements:
9. Boundaries of Scenic Viewshed:
10. Layout of Lots & Access Roads
11. Building Envelopes:

Article 4: 4.4.2 Submission Requirement

√ Location Map dated August 11, 2015 was submitted

Article 4: 4.3.3 Submissions: Information on any Historically Significant Sites: Where applicable this information is to be included on the Conceptual Plan or provided separately.