

LINCOLNVILLE PLANNING BOARD
MINUTES OF MEETING
September 30, 2015

PRESENT: Chair Ron Moran; Members Scott Harrison and Dorothy Havey; Alternate Member Jay Foster; and CEO Frank Therio

Member Dotty Lanphear has resigned and the Selectmen appointed John Ianelli to her seat as a regular member. Mr. Ianelli was not present and it was not known if he had been sworn in or not. The Chair appointed Mr. Foster to serve as a full 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 this meeting is not available.

1. DISCUSS HARBOUR POINT SITE WALK:

Since the last regular meeting the Board met for a workshop on procedure and decision making with Town Attorney Sally Daggett (9/15/2015). At that meeting, Ms. Daggett informed members that it was clear to her that the Harbour Pointe Preliminary Subdivision Plan could not be heard at the same meeting as the Public Input and Discussion Meeting. In addition, the Site Walk scheduled for September 15 had been rescheduled by the Chair to take place September 30 prior to this evening's meeting; that visit was later canceled. Dates for both the Site Walk and the Preliminary Plan review will be set later in the meeting.

Mr. Foster wanted the record made clear that the Agenda for the evening's meeting did not accurately reflect the business to be conducted: The Agenda lists the meeting as "Public Hearing for Pre-Application Phase II of Harbour Pointe Subdivision Plan". The Public Notice published in local papers correctly classified the meeting as a "Public Input and Discussion Meeting". It is an important distinction because the agenda wording infers that a formal Subdivision Application has been submitted; it has not. The Public Input Meeting being held this evening takes place, per the Ordinance, before any application can be accepted.

2. SUBDIVISION: PUBLIC INPUT and DISCUSSION MEETING:

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

The Chair informed the dozen or so members of the public that this evening's meeting would be informal - a chance for them to learn about the project and ask questions of the developers' agent, Will Gartley. Mr. Gartley began his presentation saying that the Plan being used for this evening's discussion had been greatly revised since he was last before the Board to include much more information. Copies of the Plan were not distributed to the Board.

Mr. Gartley noted that Phase I of the Harbour Pointe development was a 25-acre 14-lot subdivision. Five years after receiving approval the developers created Lot 15. There are now 45.13 acres remaining from the original parcel. The proposal is for a Conservation Subdivision which requires 30% of the land be set aside as conserved lands not to be further developed - this excludes the areas for roads and the View Easement. He informed the audience that the blocks on the lots were not indicative of where houses might be placed -- building envelopes have not

yet been defined. However, applying the Plan scale to the blocks would give an idea of how much lot area would be taken up by a house with a footprint of 70' x 30'.

NOTE: Mr. Gartley's presentation was interrupted from the beginning by questions from the audience. For the sake of clarity, the Recording Secretary has gathered these comments into categories so the discussion of each subject is easier to follow; this means that comments, questions and answers do not appear in the order in which they were given.

VIEW EASEMENT and FUTURE DEVELOPMENT:

Neighbors and abutters in attendance stated that they understood that as a result of the Phase I court case, no houses could be built in the field and that the view would never be blocked -- they believe that no more construction is permitted above the half-way mark of the field where Phase I stops. Ray Lewis, who owns Sunrise Motor Court just south of the field across Route, spoke several times to the agreement that had been reached after the court case, as did Jane Lidtke of Bayleaf Cottages. Mr. Lewis believes a "Conservation Easement" addressed future development and gave protection for neighbors and passers-by of the view over the field. Ms. Lidetke understands the same -- any buildings built at the top of Harbor Drive will take away the view from her property that her guests come for and she believes that view is protected.

Mr. Gartley replied that he has reviewed all the legal documents he can find, and found no mention of view protection other than the deeded View Easement shown on the Plan. Mr. Lewis was adamant that there is something in writing preventing further development - he will see if he can find someone who has a copy. In addition, Mr. Lewis understands that the developers are also required to preserve the view because this is a Conservation Subdivision -- the developers cannot say that this design retains the view. Mr. Lewis asked the Board to consider meeting with those who wrote the Conservation Easement (read Conservation Subdivision) so they could understand the intent and ensure that this Plan is in compliance with the provision of that Ordinance.

← The CEO will research the minutes of the meetings that cover the review of Phase 1 to see if he can find any record of the requirement Mr. Lewis describes.

Even if he does find something, Mr. Therio is not convinced that it will carry the weight Mr. Lewis would like it to have. The Planning Board can only consider what was officially approved and stipulated to by the Town in the official agreement. He is not sure that additional stipulations can be added after that fact even if it was intended according to the record (the Minutes); that will be up to counsel to determine. Mr. Therio also explained that the Planning Board at that time was found by the Court to be incorrect in denying the original application based on the impact on the View Easement because the Ordinance contained no definition of a "View Easement". The Court Order contained no other stipulations regarding the protection of the view.

Mr. Lewis read a letter from Mr. and Mrs. Ross Overcash into the record. The Overcashes live directly across the field and do not support this development -- they also understand that there was to be no more development in the field.

Kim Tucker spoke for her mother who is the second purchaser of a lot in Phase I. They understood there would be no more development in the field when they purchased the property as did Joyce Webster and her husband who recently purchased a lot. Ms. Tucker is also

concerned that no one seems to be monitoring the requirements of the View Easement to maintain the view -- there are volunteer trees starting to grow up on lots where the owners are responsible for keeping growth controlled. Ms. Tucker's concern was whether or not Phase II would be combined with Phase I and all owners required to maintain the Easement. (See "Homeowner's Association" below.)

Mr. Gartley informed the Board that the Plan being proposed is nearly identical to the one submitted for Preliminary Plan Review within a couple years of the Phase 1 approval. That Plan is the basis of the reconfigured plan for a Conservation Subdivision. People should have known that this second round of development could come before the Board -- the Application was not rejected the first time but withdrawn by the Applicants instead. This property fits the criteria to be classified as a Conservation Subdivision and that allows smaller lots in trade for setting aside 30% of the area as Open Space.

Mr. Lewis wondered if the Route 1 Committee has reviewed the proposal; they have not. The Ordinance does not require the Committee to comment on this proposal, but members can come as citizens to speak at the Public Hearings.

HOME OWNER'S ASSOCIATION and COVENANTS:

Some of those attending were property owners in Phase I and there was a great deal of discussion about what the Covenants provided for and about the inactive status of the Homeowner's Association. It is Mr. Gartley's understanding that the same covenants that apply to Phase I will be included in the deeds for lots in Phase II. Phase II owners of the road and cul de sac off Harbour Pointe Drive may end up solely responsible for the care and maintenance of that road, but whether or not there will end up being one Homeowner's Association or two is not known at this time. The Conservation Subdivision Ordinance requires that Phase II have a formal Association in place before approval is granted. The CEO gave the homeowners in Phase 1 advice on what they can do to activate their Association and to amend it to include provisions they want to see in place.

Height and Square Foot Restrictions:

The original Covenants for Phase I have been amended twice now - the latest amendment (recorded at Book 2066 Page 171) increased the minimum square footage for a home to 2400SF. If Phase 1 is to have the same covenants it would apply there as well.

Barry Webster, a lot owner in Phase 1, asked about height limits. The restriction of building heights for houses in Phase I to 32' is controlled by the Shoreland Ordinance and not by the Covenants as some thought. Because none of the houses in Phase II are within the Shoreland Zone they can be as tall as 45' per the Ordinance provisions for the General District where these lots are located. Those living across from the field hoped that something could be done to limit the height so houses adjacent to Route 1 would not totally obscure the view.

Mr. Foster asked: "Will the view be impacted? Yes. Will it go away? No. It is safe to say that the same kind of development that occurred in Phase 1 will take place in Phase II." It is the market that drives what will occur and people wanting to own large homes on large lots with views of the bay will be the ones who purchase these lots. The Planning Board does not review

anything to do with how the houses look or how large they are - once the subdivision is approved that is up to the developers and lot owners.

WILDLIFE

In their letter the Overcashes spoke to the wildlife that use the field as sanctuary. Mr. Lewis also spoke about the number of deer and birds that use the field daily and wonders if this qualifies as a Deer Yard or Deer Wintering Area; Mr. Gartley found no record that it does. Mr. Ahearn also spoke to the number of deer they see and the migratory birds that rely on the wetlands. They hope that the development will stay clear of the wetlands for this reason.

Mr. Gartley described everything they have to look at when they are delineating wetlands: the hydrology; the plant life; and the soils are all examined. Many of the areas in the field that are shown as wetlands on the Plan will not even appear to be wetlands to the casual observer -- people may not even get their feet wet walking through the area. They are wetlands however and impacting them requires permission from the DEP and the Army Corps.

ENVIRONMENTAL IMPACT: STORMWATER RUNOFF and EROSION CONTROL:

Lance and Liz Ahearn are western abutters. They bought knowing there *might* be a development in the field, but their concerns are whether or not the first development caused the stream to erode and the resulting siltation at the cobble beach at the base of the stream. There was also a serious decline in mussels in the area. If that development was even partly to blame they are very concerned about what might result from further development especially since it will take place closer to the stream than Phase 1. The CEO provided an in-depth response that addressed what other reasons might have led to the disappearance of the mussel bed. He noted that erosion will be closely monitored during construction of the roads and during the construction of each home.

Mr. Gartley will submit the Plan for Stormwater with the Preliminary Plan. They must design the plan based on 100% occupancy of the lots and the resulting impervious surface that would exist as a result. They also must continue to meet Performance Standards to ensure the system works as designed -- that performance is monitored by the CEO.

The Ahearns are also concerned if there will be any requirements to limit phosphorous run-off -- like limiting the application of chemicals on lawns. It was later suggested that this kind of limitation is something that could be addressed in the Subdivision Covenants if the majority of homeowners agreed.

The CEO recommended that anyone who is interested read the January 9, 2006 Order from Judge David Little regarding Harbour Pointe Phase I - this Order ended the multi-year lawsuit regarding the review of the Subdivision and contains excellent guidance for Boards making Findings of Facts during these reviews.

There were no further questions or comments from the Public. When asked if there had been any phone calls or letters expressing concerns that should be part of the record, the CEO stated that this was not a Public Hearing.

The Public Information and Discussion Meeting was closed.

3. MINUTES: The Recording Secretary is revising the Minutes of the August 26 Meeting.
MOTION by Mr. Moran seconded by Mr. Foster to defer action on the Minutes of August 26, 2015.

VOTE: 4-0-0

4. OTHER:

(1) The CEO distributed two "Timelines of Review" for a Harbour Point Subdivision Application once it has been submitted: The first was created by Attorney Sally Daggett the second by the CEO. Due to the fact that the Site Walk has been rescheduled and that members will be absent for some of the proposed meetings dates (Mr. Gartley would not be present for one of the meetings) the scheduled was re-worked to accommodate availability. It will be important that as many members as possible attend all meetings in the review.

(2) The CEO also distributed an article from the June 2015 Maine Townsman that also discusses a recent Maine Supreme Court Decision involving Planning Boards and their obligation to adhere to the Ordinance requirements consistently through-out the process of review.

(3) The CEO distributed an email received earlier in the day from Chris Osgood concerning Conservation Subdivisions and the drafter's intentions regarding design. Mr. Foster dismissed Mr. Osgood's request that the Board consider speaking with some of the drafters so members could better understand the Purpose and intent of the Subdivision Ordinance with regard to Conservation Subdivisions. Both Mr. Foster and Mr. Osgood were among the drafters and Mr. Foster believes that the intent of each drafter differed and that it would serve no purpose to have a discussion. Ms. Havey dismissed the letter because it was not signed with Mr. Osgood's name - she did not believe it should be considered in light of that fact. The letter was not made part of the Record of the Public Discussion Meeting.

5. UPCOMING MEETINGS:

October 14, 2015: Shoreland Application

October 21, 2015: Ms. Havey offered to check with Will Gartley to see if he is available for October 21 for a Site Walk at Harbour Pointe.

October 28, 2015: New member Board Orientation and mock Subdivision Review

There being no further business before the Board they adjourned at 9:15pm

Respectfully submitted,

Jeanne Hollingsworth, Recording Secretary