

Kennebunkport Planning Board
September 16th, 2020 ~ 6:00 PM
Virtual Meeting (Via Zoom)

A meeting of the Planning Board was held on Wednesday, September 16th, 2020. The virtual meeting convened at 6:00 p.m. via Zoom.

Members Present: Mr. Tom Boak (Chair), Nina Pearlmutter, D. Scott Mahoney, Ed Francis, Larry Simmons, George Lichte, John Harcourt

Approval of Minutes: Ms. Pearlmutter made a motion to approve the minutes from the September 2nd, 2020 Planning Board meeting. Mr. Simmons seconded the motion and the vote was unanimous.

Items:

1. **200701 Tidemark Corporation (Chicks Marina) / Eco-Analysts, Inc., Authorized Agent** — Site Plan Review — **Findings of Fact** — for approval to do a maintenance dredge to remove approximately 1,800 cubic yards of sediment to restore adequate access depths at the marina. The dredge was previously approved by the Planning Board on March 15, 2017, but was never done. 75 Ocean Avenue, identified as Assessor's Tax Map 08, Block 001, Lot 22 in the Riverfront Zone. *Scott Mahoney, Case Manager*

Mr. Mahoney read the Findings of Fact into the record. Mr. Boak made a motion to approve said Findings. Ms. Pearlmutter seconded the motion and the vote was unanimous.

2. **200801 James & Susan McMahon / James Logan, Longview Partners, LLC, Authorized Agent** – Minor Subdivision Amendment – **Public Hearing** – for approval to amend a lot line. (18 Northwood Drive, identified as Assessor's Tax Map 12, Block 005, Lot 05A in the Village Residential Zone.) *John Harcourt, Case Manager*

Mr. Boak introduced the Agenda item.

Mr. Jim Logan of Longview Partners addressed the Board and stated this Application is to obtain approval for a modified lot line between two lots and for a revision to the 75-foot setback line to the stream only.

The Board members had no questions for the Applicant.

Mr. Boak opened the Public Hearing and asked if any members of the public wished to address the Board. There were no questions or comments from the viewing public. Mr. Boak closed the Public Hearing.

Mr. Boak made a motion to approve this minor subdivision change Application. Ms. Pearlmutter seconded the motion and the vote was unanimous.

Mr. Harcourt read the Findings of Fact into the record. Ms. Pearlmutter made a motion to approve said Findings. Mr. Simmons seconded the motion and the vote was unanimous.

3. **200802 Kennebunkport Heritage Housing Trust 2 / Sebago Technics, Authorized Agent** – Final Subdivision Review – **Initial Review** – for approval to create 4 lots consisting of 2 single family dwellings and 2 duplex units on a 4.47 acre parcel. (Main Street, Assessor's Tax Map 22, Block 9, Lot 21 in the Cape Porpoise West Zone.)

Mr. Boak introduced the Agenda item and explained the order of procedure for the viewing public.

Mr. Steve Doe of Sebago Technics addressed the Board stating this Application is for final approval of a subdivision; adding there are no physical changes to the layout of the buildings or roadways from the Preliminary Subdivision Review. Mr. Doe noted there was some language added to the subdivision plans regarding the use of non-organic fertilizers, pesticides, herbicides, etc. and that language will also be included in the lease agreements. Mr. Doe also added the Trust has finalized the lease agreements and will make sure the final copies are forwarded to the Planning Board as part of this Application. Lastly, Mr. Doe stated the property valuation was submitted to the Board members a few days ago.

Mr. Doe also commented the Applicant has agreed to use double-hung windows with screens and limited each unit to one sliding glass door to help prevent bird strikes.

The last item Mr. Doe discussed was a letter submitted verifying that Acorn Engineering's comments have been addressed.

Referring to a statement in the Applicant's cover letter which states: "We have contacted the Planning Office to get an indication of net increase and taxable valuation which will be generated by this project. This will be submitted upon request.", Mr. Boak asked if the Board members have received any further information from either the Applicant or from Mr. Gilliam. Mr. Doe responded he received something from Becky Nolette of the Town's Assessment Office and forwarded that information to Mr. Gilliam and Ms. Lisa Harmon in the Code Enforcement Office. Mr. Gilliam acknowledged receipt of that information adding it has been posted to the website and will make sure copies are passed along to the Board members.

In reviewing the cost estimate worksheet in the Application, Mr. Boak asked what the 45,000 sq. ft. of loam and seed would be used for. Mr. Doe replied the cost estimate is for the roadway on either side of the Right of Way.

Mr. Boak also noted that the Applicant's Maine Housing Loan will have to be extended. Mr. Doe stated he will check on that.

Mr. Boak also asked about the repayment terms of the Trust on their loan from the Genesis Fund. Mr. Doe replied he will take these notes and forward them to Pat Briggs or Pat Clancy to reply to the Board.

Along with his question on the loan, Mr. Boak asked if there is a volunteer with the Trust who will be handling all the paperwork of collecting rents and will that person be audited. Ms. Pearlmutter questioned if the person who is collecting the rents will be bonded.

Regarding the sliding glass doors, Ms. Pearlmutter recalled the Applicant stated previously there were not going to be any and now there will be one per unit. Ms. Pearlmutter added the sliding glass doors can have screens. Mr. Doe agreed it is common practice to have screens on the doors.

Ms. Pearlmutter noted there is a letter from the Maine Department of Transportation indicating they are abandoning their easement for highway purposes and asked if the town has also vacated that easement as well. Mr. Doe replied he believes the town did abandon it a while ago, but he will investigate that. Mr. Gilliam offered to pull the documentation the town received from the Maine DOT.

Ms. Pearlmutter questioned if the prep costs for the road are adequate if there is going to be any blasting. Mr. Doe replied they do not anticipate any blasting for the road as it will lie within the existing parking lot. Ms. Pearlmutter suggested their cost estimate should be based on a worst-case scenario rather than a best-case scenario. Mr. Doe suggested as a contingency they could add 10% to account for something like that. Mr. Gilliam reminded the Board members there is a 25% contingency built into what the Subdivision Regulations require so when you look at the cost estimates it is set at 125%. Mr. Doe added in his experience this is an engineer estimate but when they apply for the performance guarantee the town will require the actual contract from the contractor which are the real numbers. Mr. Gilliam agreed with Mr. Doe's statement adding the town requires the actual contract of who will be doing the work.

Mr. Boak asked to have a peer review by an independent firm on the cost estimates in this Application. Mr. Gilliam agreed to request Acorn Engineering review the estimates to insure their validity.

Mr. Francis asked if each of the driveways were going to be private roads and if they would be put up in the future to become public roads. Mr. Doe replied the roads are private roads and do not meet the standards of a public road so they will remain private.

Citing the proposed cost of \$11,000 for sidewalks, Mr. Francis asked if they considered the savings of not putting in sidewalks. Mr. Doe responded this project is to create a neighborhood and they need to put the curb in anyway on that side of the road to direct the water to the basin so part of this is for kids to walk on the sidewalk instead of in the street. Mr. Boak asked if the Subdivision Regulations required sidewalks on private roads. Mr. Gilliam replied the Subdivision Regulations require them if you are in a growth area; it is certainly something the Housing Trust could ask a waiver of but since there is no waiver request sidewalks are part of the plan. Mr. Doe stated he would bring the potential savings up with Trust.

Mr. Simmons asked if there was going to be a Homeowners Association formed as part of this organization to make this project work and if so when would it be formed and what are the associated costs. Mr. Simmons also asked to see an organizational chart and a risk matrix where you anticipate a consequence and have some mitigations or contingency plans in case those disasters occur. Lastly, Mr. Simmons asked to see what the anticipated cash flows are on this project in terms of the capital costs, when those construction costs occurred, and how all those would be paid back. Mr. Doe took note of Mr. Simmons requests and agreed to bring those questions to the Trust members.

Mr. Francis commented what is before the Board right now is an Application to prepare the roads and do the basic subdivision development.

Mr. Simmons explained the need for the organization chart is separate from the cash flow estimates but it is still going to be useful to see how that \$144,000 is going to be spent and paid back and how that figures into the expectations for this initial part of the project. Mr. Gilliam offered that the loans are no different than any other financial commitment as any other homeowner; these homes are sold to qualified buyers and there are costs associated to paying off these loans not dissimilar to any other type of development.

Mr. Simmons stated he is thinking about the rents that will be collected by the town. Mr. Gilliam clarified there are no rents collected by the town rather the Housing Trust is a separate organization and so this funding is independent of any town government in that sense.

Mr. Simmons stated it would be useful to see what the anticipated cash flow would look like in this initial step and to see how the cash will be administered and what sort of investments and revenues will be generated and dispersed.

Mr. Gilliam commented it sounds like Mr. Simmons' questions are more related to how the Trust organization works itself as opposed to this specific Subdivision Application. Mr. Simmons agreed with Mr. Gilliam's comments.

Ms. Pearlmutter made a motion the Application is complete. Mr. Simmons seconded the motion and the vote was unanimous.

Mr. Boak announced a Public Hearing will be held at the next Planning Board meeting on October 7th, 2020. Mr. Boak will be Case Manager for this Application.

4. **200803 Robert Williamson / Atlantic Environmental, LLC, Authorized Agent** – Site Plan Review – **Initial Review** - for approval to do maintenance on the bulkhead, which is failing, by placing pressure treated timbers and a waler along the face of the existing wall. Riprap will also be installed. (47 Ocean Avenue, identified as Assessor's Tax Map 10, Block 1, Lot 7 in the Riverfront, Shoreland and Resource Protection Zones.)

Mr. Boak introduced the Agenda item.

Mr. Tim Forrester of Atlantic Environmental addressed the Board and summarized the Application. Mr. Gilliam shared the Application's plans on the screen for the viewing public. Mr. Forrester explained Mr. Williamson owns the adjacent property Arundel Wharf as well as an easement strip in front of the riverbank condominiums for rights, ownership, and maintenance of the existing timber wall. Over the years the wall has had a number of issues, a couple of timbers have snapped and the construction of it is allowing crushed stone to filter through the top deck and exit below into the mudflats, Mr. Forrester stated. Some of the concerns, Mr. Forrester continued, are the fill material that is behind the wall and the vibration that would be generated from driving sheet pile so instead, the most favorable option is this plan which is to install additional 8'x8' timbers along the wall, adding a waler which ties it all together and reinforce the face with riprap and large irregular stone to provide back pressure against the wall. Lastly, Mr. Forrester noted they have received approval from the Maine Department of Environmental Protection and the Army Corps of Engineers.

In reviewing the Application, Ms. Pearlmuter commented there will be riprap in front of the timbers so boats coming in if they hit it would hit the rip rap first and not the wall. Mr. Forrester replied there really are not any boats in there as there are no docks.

Ms. Pearlmuter asked how much farther this will extend out than it exists now. Mr. Forrester responded the rip rap will be on a 1:1 slope so it will extend out approximately 7 feet.

Ms. Pearlmuter asked if there is any affect on marine life in there. Mr. Forrester explained there are mud flats in there and the rock that they are putting in is essentially sitting on crushed stone that is already there and there were no significant populations for clams and worms.

For clarification purposes, Mr. Mahoney asked if the footprint will be 7 feet further into the tidal zone than it is now. Mr. Forrester replied yes, the total slope will extend out 7 feet and will taper up on a 1:1 slope. Mr. Forrester added the Applicant owns the parcel of land in his deed that includes rights to the tidal zone. Mr. Mahoney then asked if the Harbormaster had to approve the 7-feet less of river in that area. Mr. Forrester stated he did send the project before the Kennebunk River Committee and they had no objections. Ms. Pearlmuter acknowledged there is a letter stating as such from the River Committee included in the Application.

Mr. Simmons asked how long the wall has been there: 45 years or so, and if it is simply wearing out. Mr. Forrester replied yes, the wall has been around that time and the design is such that it appears to be just a timber box with rock filled in where many of the deadman timbers that penetrate into the upland have snapped and allowing the crushed stone to filter out.

Mr. Simmons then asked what the Applicant's technique is for placing all the riprap. Mr. Forrester replied they have the 25-foot easement and the proposed method is to start at the furthest south end and work their way backwards so the timbers will go in first, the waler, the filter fabric and then use an excavator with a thumb and install the rock along the face of the wall. Mr. Forrester added all work will be done from the upland and using the excavator to place the 2-4-foot diameter rocks cobbled amongst themselves to produce an irregular surface with voids to create habitat in and amongst the rocks. Mr. Forrester further explained the tow stones are placed first on the bottom of the slope and will be buried to half the depth of the stone.

Mr. Simmons commented on the plan it states they would excavate the first 1-foot depth to anchor the wall and asked if there is an issue with disposal of the excavated material. Mr. Forrester replied it is not that much material and it will be done in small increments so as it is scooped up it can be put right into the truck, dewatered on site and hauled up to be disposed of. Mr. Simmons questioned whether 1-foot depth was deep enough to secure the stones. Mr. Forrester responded he has done these projects up and down the coast and it is a standard design and is unaware of any that have had a significant failure.

Due to the fact the work is being done in a mud flat, Mr. Simmons asked what the likelihood is the weight of the wall will make it sink below so they will need more material than is projected for completing the construction and if the bearing strength of the soil is great enough to take the weight of the riprap. Mr. Forrester replied he has never had that issue of a project sinking down into the ground and in terms of the wall they are not really adding much weight to the timber walls as the majority of the pressure is the downward pressure of the rock itself. Mr. Forrester added there were some test borings that were done on the uphill side within the easement area and showed it was old historic fill and don't anticipate it will sink or fail or cause any additional problems once its installed.

Mr. Simmons also asked if the elevation could be added to the plans and if there was a basis of design for this. Mr. Forrester agreed to add that information to the plans and stated the contractor is H.B. Fleming, Inc. and Scotty Linscott, P.E. is the engineer who designed this based on his recommendations from an engineering standpoint and mine on the environmental side.

Mr. Harcourt asked how far the construction is from the abutters dock. Mr. Forrester replied it is approximately 42 feet.

Mr. Boak asked Mr. Gilliam if this property was in the Shoreland Zone as well as the Riverfront Zone. Mr. Gilliam stated the Riverfront Zone is a general development district so they do not have the Shoreland Zone overlay there but when you look at the zoning description those areas

are still designated as Resource Protection so this is a combination of the Riverfront Zone and the Resource Protection Zone. Mr. Boak noted the Application needs to be amended as it is not in the Shoreland Zone. Mr. Forrester agreed to make that correction on the Application.

Ms. Pearlmutter made a motion the Application is complete. Mr. Simmons seconded the motion and the vote was unanimous.

Mr. Boak announced a Public Hearing will be held at the next Planning Board meeting on October 7th, 2020. Mr. Francis is Case Manager for this Application.

Adjournment: A motion was made to adjourn, it was seconded and the vote was unanimous. The meeting was adjourned.

Submitted by: Patricia Saunders, Planning Board Recording Secretary