

**Kennebunkport Planning Board**  
**January 6th, 2021 ~ 6:00 PM**  
**Virtual Meeting (Via Zoom)**

A meeting of the Planning Board was held on Wednesday, January 6<sup>th</sup>, 2021. 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: Mr. Francis made a motion to approve the minutes from the December 16th, 2020 Planning Board meeting. Ms. Pearlmutter seconded the motion, and the vote was unanimous.

Items:

1. ~~201001 Boughton Hotel Corporation d/b/a The Colony Hotel / Windward Development, Authorized Agent~~ North Campus Site Plan Review ~~Public Hearing~~ for approval to demolish all existing buildings and parking areas and construct two new building with multiple parking areas. (128 Ocean Avenue / 12 & 14 Colony Avenue, identified as Assessor's Tax Map 8, Block 8, Lots 14, 15 & 16 in the Riverfront and Shoreland Zones.) ~~Nina Pearlmutter, Case Manager~~ Continued to a future date at request of Applicant.
2. ~~201002 Boughton Hotel Corporation d/b/a The Colony Hotel / Windward Development, Authorized Agent~~ South Campus Site Plan Review ~~Public Hearing~~ for approval to demolish 4 existing buildings and construct one new building, to include building expansion, and the reconstruction of circular parking area. (140 Ocean Avenue, identified as Assessor's Tax Map 8, Block 6, Lot 4 in the Riverfront and Shoreland Zones.) ~~Nina Pearlmutter, Case Manager~~ Continued to future date at request of Applicant.
3. **201004 Ivy Subdivision / Sebago Technics, Authorized Agent – Public Hearing** – for approval of major changes to previously approved subdivision – to subdivide a 7.8 acre lot (previously known as Lot #2 of Ivy Subdivision approved in 2012), to create 2 lots; one lot will be accessed by Colony Avenue and the other will be accessed by Endcliffe Road. (Endcliffe Road / Colony Avenue known as Assessor's Tax Map 7, Block 13, Lot 1B in the Cape Arundel Zone.)

Mr. Boak introduced the Agenda item and explained the order of events for tonight's meeting and Public Hearing.

Mr. Boak asked Mr. Steve Doe and Attorney Ralph Austin to join the panel and present the Application including the revisions discussed because of the Site Walk conducted prior to this meeting.

Mr. Doe shared his site plans on the screen for the Board members and viewing public and explained some of the changes made since the last meeting, which are:

- Parcel is just under 8 acres and will be split into 2 Lots
- Lot 1 will be accessed from Colony Avenue
- Driveway to Lot 1 will be reconfigured to come directly off Colony Avenue and not from the Perkins' driveway
- Wetlands on the parcel are not in the Shoreland Zone
- Lot 1 will be served by public water
- Sewer connections for Lot 1 and Lot 2 will be served from Main Street
- The sewer connection to Lot 2 will run down the driveway of Lot 1 through a very narrow crossing in between a wetland area that is not of special significance
- Open space area will be modified to add the crossing area to Lot 1 to minimize the wetland impact
- Lot 2 is smaller in area to Lot 1 and will be accessed from Endcliffe Road
- Lot 2 will have its own well as there is no public water in that location
- Improvements will be made to Endcliffe Road as discussed from the Chickadee Trust Plan
- Proposed hammerhead turn on Endcliffe Road would be moved as indicated on the site plans
- There will be no connection with Old Fort Inn as previously discussed.

Attorney Austin commented they have been working with the residents along Endcliffe Road who have made known a number of concerns and are working on addressing those concerns.

Mr. Francis expressed his confusion on the ownership of the Right of Ways historically and how the Applicant is authorized to use those Right of Ways. Mr. Austin explained this property is part of a 1980 subdivision which as a lot on those approved plans they

have a right to use those roads. Mr. Francis clarified the Applicant has the right to use those roads, but they do not have ownership of the roads. Mr. Austin responded the roads are private roads and not under town ownership where the abutters own to the center line of each side of the road.

After a brief discussion on the history of the subdivisions and the roads within such properties, Attorney Austin agreed to continue his discussions with the residents of Endcliffe Road to determine how the improvements and maintenance of the road will be conducted in the future.

Mr. Boak questioned if an amendment to the Cape Arundel Woods subdivision plans should be filed as well since the hammerhead turn on Endcliffe Road was originally part of that subdivision plan. Attorney Austin replied they would need to get approval from Alexandra Buxton's Attorney since they have no right to that lot, but it would certainly behoove her to have those subdivision plans amended. Attorney Austin added it is not necessary for our purposes since the hammerhead will be on our lot.

After some discussion, Mr. Doe and Attorney Austin explained with the exception of the location of the hammerhead turn, they will be making the road improvements that were previously approved by the Planning Board for the Chickadee Trust Application. Ms. Pearlmutter noted the previous Planning Board approval for the Chickadee Trust Application was based on the Fire Chief's recommendation and this Application is omitting that location for the hammerhead turn even though it is on private land it is still a minor change to that particular Application. Attorney Austin agreed he will speak with the abutter as it makes sense to file an amendment citing the reasons for the change.

Mr. Boak asked the Applicant to verify the length of the proposed road if it is in fact over 1,000 linear feet. Mr. Doe agreed to research that and provide that information to the Board.

Mr. Boak then asked if the proposed lots will be renumbered and how ownership of the open space are will be held. Mr. Doe replied Lot 1 will be renamed Lot 2A and Lot 2 will be renamed Lot 2B. The open space area will be a shared ownership between the 2 lot owners, Mr. Doe added.

Referring to the woods road on the property, Mr. Boak asked if it would still be available for emergency access as promised in the original Ivy II Subdivision documents. Mr. Doe responded it is not easily traveled unless you have a truck and once the hammerhead turn is built there will be a grade change along with a rather large tree at the end. Given the abutters' concerns the woods road would be used for thru traffic, Ms. Pearlmutter suggested adding some shrubs to discourage that.

Mr. Lichte asked if the Applicant intends to do the development improvements to the property immediately and would those improvements be maintained until the parcels are sold. Mr. Doe responded their intent is do the improvements to Lot 2 in order to gain access to the lot but there is not much to be done to Lot 1 other than a water line to install which would not happen until the lot was sold.

Mr. Francis asked if they intend to pave the driveway for Lot 1 before it was sold and if they were going to name the private driveway per the Fire Chief's request. Mr. Doe replied they will not pave the driveway for Lot 1 and would leave that up to the new owners. As for the street name, Mr. Doe stated he would review the Fire Chief's letter and speak with the Chief himself to clarify that.

Ms. Pearlmutter asked if the Applicant will give an easement to the next-door neighbor who has to drive across their proposed road. Attorney Austin replied they would probably grant her an easement as there is no intent to not allow her to continue drive there.

In reviewing the hydro-geography of the parcels, Ms. Pearlmutter questioned whether there should be an independent assessment of the stormwater plan given the vernal pool setback and the location of the proposed driveway. Mr. Doe responded that in speaking with their wetland specialist the 100-foot setback is an Army Corps of Engineers requirement which has since been rescinded so the only setback requirement is the Maine DEP's 250-foot setback of significant vernal pools so within that 250 feet under a Permit By Rule they can't disturb any more than 25% of the land area around there.

Ms. Pearlmutter asked where the house would be located. Mr. Doe indicated on the site plans where the house would be situated. Ms. Pearlmutter commented that is in the vernal pool buffer. Mr. Doe agreed with Ms. Pearlmutter stating they are allowed to disturb up to 25% of the vernal pool area and are trying to preserve the wooded habitat which is substantial in the open space area.

Ms. Pearlmutter also expressed her concern for the number of trees indicated on the plans that are more than 16-inches in diameter which are responsible for taking up a lot of water and will impact the stormwater runoff if they are removed.

The Applicant and Board members had a discussion on stormwater runoff, streams, culverts, and the GIS mapping of the area.

Ms. Pearlmutter also suggested the Applicant review the town's Comprehensive Plan to ensure they have provided a report to assess the potential impact of the Subdivision on the significant habitat and adjacent areas. Attorney Austin replied he will ask Mr. Doe to review that section of the Comprehensive Plan.

Mr. Francis asked if the Applicant has agreed to file a minor amendment to the Arundel Woods Subdivision after obtaining permission from that lot owner. Attorney Austin replied they will reach out to the lot owner to get their approval.

Mr. Francis also asked the Applicant if they could reach out to the abutters and attempt to have an agreement with regards to road maintenance. Attorney Austin agreed to Mr. Francis' request.

Mr. Francis also asked about signage for the road citing there is a personal sign for the Perking's property. Mr. Doe added a comment was made by one of the abutters at the Site Walk that there isn't even a stop sign at the road intersection to Spring Valley Road. Mr. Gilliam explained he has had a conversation with Fire Chief who works with the Address Officer acknowledging this Subdivision Application was in motion and there is a desire by the town to clarify what the name of this particular road is but also knowing that request will be pending the outcome of this Application.

Mr. Gilliam further explained the town road names are approved by a group of town officials that weigh in on road naming requests that consists of himself, the Police Chief, the Fire Chief, the Town Manager, and the Public Works Director, who all weigh in on private road name requests primarily for the purpose of making sure there are no conflicts of previously named streets for EMS purposes.

Attorney Austin asked if they obtain approval for this Preliminary Application, could the road naming committee make a preliminary determination on the road name that would go into effect if the final Application was approved? Mr. Gilliam responded it could be constructed that way; noting typically the committee asks the property owners that use the road to provide suggestions.

Mr. Francis asked if there was to be any blasting as part of this Preliminary Application. Mr. Doe replied he doesn't see anything happening on Lot 1 but there could possibly be blasting on Lot 2 when the road is being improved although the site has already been blasted so they hope they can just build the road on top of the terrain instead of blasting.

Mr. Francis asked about fire hazards and the location of the hydrants for each lot. Mr. Doe replied there is a hydrant at the end of Endcliffe Road and there is a hydrant at Dover Lane and Arlington Lane where a truck could come in by the Old Fort Inn. Mr. Francis also commented there may need to be some corrections made to Note #20 on the site plans that discuss a fire lane to be maintained. Mr. Doe acknowledged Mr. Francis' comment adding he will also review Note #22 which is no longer applicable.

Mr. Francis also went through a list of items the Applicant needs to address regarding waivers and notes on the site plans, which are:

- Waiver for a private dead-end road greater than 1,000 feet
- Waiver for 18-foot-wide road requirement to be 14-feet wide with 4-foot gravel shoulders
- General Note #14 regarding a sewer easement that should be removed or revised.

Mr. Doe agreed to review all of Mr. Francis' requests when revising the site plans.

To eliminate the controversy with the residents of Endcliffe Road and to avoid the need to cross the small stream on the property, Mr. Simmons asked if the Applicant would have any interest to reconfigure their plans to provide an eastwards extension of Perkins Way and then have the access to Lots 1 and 2 enter from a new road extending southwards from such extension through the proposed wetlands open space area. Mr. Doe responded the Perkins' house is directly on the Right of Way and once past their house it is all undeveloped land; and additionally, it is that habitat in the open space area they wish to preserve.

There were no further questions from the Board members at this time.

Mr. Boak opened the Public Hearing.

Mr. Jim Martin, an abutter, addressed the Board and asked to see a calculation chart done identifying the area calculations and the allowed 25% of developed area calculations within the 250-foot setback. Mr. Martin also noted the 25% allowable developed area should be of land the Applicant owns as according to statute. Mr. Doe agreed to review that statute noting it may have changed but will include those calculations on the site plans.

Mr. David Strachan addressed the Board regarding his letter submitted prior to tonight's meeting asking why this Application is going forward when the Board of Selectmen denied an Application for development of this area in 2006. Mr. Boak acknowledged receipt of Mr. Strachan's letter as well as Attorney Austin's reply to such letter. Attorney Austin explained the 2006 proposal was not from this developer and was for a much larger project that included significant changes to public streets and an island in Arlington Avenue. Mr. Doe added there was off site improvement in Arlington Avenue and Main Street which was all in the public Right of Way and in the Critical Edge Zone at the time as well. Attorney Austin continued the developer could not make those improvements which were critical to his plan without Board of Selectmen approval which they did not approve. This Application is not proposing any changes to public streets or any changes in the then Critical Edge Zone which no longer exists, Attorney Austin concluded.

Mr. Strachan asked about the wildlife features on the property and if the Maine Department of Inland Fisheries and Wildlife has reviewed this Application as required by Article 11.8.C.3. in the Kennebunkport Subdivision Regulations. Mr. Doe responded they did contact the Department of Inland Fisheries and Wildlife who did not have any critical habitat identified on the property; the report of which was submitted yesterday by Attorney Austin. Attorney Austin added they do need to review the Comprehensive Plan as Ms. Pearlmuter brought to our attention.

Regarding the stormwater management plan in the Subdivision Application, Mr. Strachan asked how much landfill will be used for the subsequent driveway relative to the existing waterway/creek? Mr. Doe replied there are standards they must meet for any culvert they will be putting in to cross that stream which will be a fairly large culvert that will have to be embedded to maintain a vegetative bottom to allow any amphibians or wildlife to pass through it. Mr. Strachan cautioned the Applicant those wetlands drain in there and during the springtime it is a raging river through that culvert and floods out. Mr. Strachan also warned that the culvert on South Main Street cannot handle the flooding during the spring.

Mr. Strachan's next question was regarding traffic and asked if the town or developer would commit to building only a single-family residence on Lot 1 to avoid having a bed & breakfast being built or some other commercial property that would require new traffic patterns to be developed. Attorney Austin replied the property is in a residential zone so they plan to have only one single family residence built on each of the lots and would be happy if the board wanted to make that a deed restriction and condition of approval.

Mr. Strachan lastly commented that the intersection of South Main Street, Spring Valley Road, Arlington Avenue, Colony Avenue, and Perkins Way is an extremely hazardous intersection with no defined traffic pattern or lines on the roads and asked the Planning Board to do something about that when they are potentially adding another street and additional drivers to the area. Attorney Austin acknowledged Mr. Strachan's concerns adding he is discussing the matter with his clients on how to address that.

Mr. David McCullough addressed the Board questioning why the Fire Department would not require a turnaround for a truck in the driveway for Lot 1. Mr. Doe replied the Fire Chief did comment about that and has required there be a turnaround on Lot 1. They have addressed that requirement in a note on the plan and did not want to be specific as to its location until the lot is sold and the new owner has decided where the house will be constructed, Mr. Doe added. Mr. Doe read the note on the site plans that states: "Lot 1 shall provide a driveway turnaround on the lot within 100' to 200' from the building which will accommodate a fire ladder truck. Size and location of turnaround to be approved by the Fire Chief prior to issuance of a building permit".

Mr. McCullough then asked if the proposed driveway on Lot 1 would be paved and how would snow and maintenance of that road be handled so it didn't negatively impact snow removal for the Perkins residence. Mr. Doe responded they do not propose to pave the driveway as it will remain gravel and there will have to be some maintenance agreement set up with the lot owner and the Perkins residence.

Mr. McCullough also asked if there were any plans to put a culvert underneath Perkins Way to handle the water that comes down from abutting properties. Mr. Doe acknowledged there is a substantial hillside coming down to the Perkins' lot and if there is a need for a culvert they will determine where it should be placed.

Regarding a legal opinion letter submitted to the Board prior to this meeting, Mr. McCullough asked about a portion of the town way that voted in 1928 to discontinue it as a public way and would revert to each abutter to the center line. Attorney Austin responded when the town abandoned the public Right of Way the ownership went to the center line, but each abutter maintained a right to go over the road. Mr. Doe added there was a detailed letter submitted in 2005 from a surveyor that discussed this issue and would be happy to submit that to the Board for their review.

Attorney Nathaniel Huckle-Bauer, representing the Buxtons on Poet's Lane addressed the Board to express his clients support to the changes made in this proposal to reduce the road width and the relocation of the hammerhead turn on Endcliffe Road. Attorney Huckle-Bauer requested that the Applicant minimize or possibly eliminate any blasting on the property and requested if they could

maintain the established trees and vegetation as much as possible. Attorney Huckle-Bauer also requested if the Applicant could increase the setback on the common boundary line as much as possible to further his client's privacy. Mr. Doe responded they will be increasing the buffer on Lot 2 to 30 feet.

There were no further comments from the viewing public at this time.

After some discussion amongst the Planning Board members and Mr. Gilliam, the Board members agreed they would like a peer review to be conducted of the stormwater management plan prior to approving this Preliminary Application.

Mr. Boak announced it would be best if the Board continue the Public Hearing for this Application to a later date to give the Applicant a chance to make the changes to the site plans along with receipt of the peer review report from Acorn Engineering.

Ms. Pearlmutter suggested to possibly post on the town website all letters received from abutters and the Applicant's response to such letters, so the public has an opportunity to review those items. Mr. Gilliam agreed to post that information on the website bearing in mind it may take a few days from receipt at the town offices for it to be put onto the website.

Ms. Pearlmutter made a motion to continue the Public Hearing to the next Planning Board meeting. Mr. Francis seconded the motion, and the vote was unanimous.

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

**Submitted by:** Patricia Saunders, Planning Board Recording Secretary