

**Kennebunkport Planning Board**  
**August 3, 2016 ~ 7:00 PM**  
**Kennebunkport Village Fire Station, 6 Elm Street**

A regular meeting of the Planning Board was held on Wednesday, August 3rd, 2016. The meeting convened at 7:00 p.m. in the Kennebunkport Village Fire Station.

Members Present: Mr. David Kling (Chair), Peter Fellenz, Tom Boak, Russ Grady, Ray Hilwig, D. Scott Mahoney  
Mr. Fellenz will act as Chairman for this meeting until Mr. Kling arrives.

Approval of Minutes: Mr. Boak made a motion to approve the minutes from the July 20th, 2016 Planning Board meeting. Mr. Grady seconded the motion and the vote was unanimous.

Items:

1. **160501 John Henchey / Mitchell & Associates, Authorized Agent** – Site Plan Review – **Findings of Fact** – for approval to create an additional Right-of-Way by extending Hillside Drive to provide access to a proposed lot. [The property is located off Ocean View Road, identified as Assessor's Tax Map 41, Block 002 Lot 09 in the Goose Rocks Zone.] *Ray Hilwig, Case Manager*

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

2. **160601 Louis T. Graves Memorial Library / Sebago Technics, Authorized Agent** – Site Plan Review – **Public Hearing** – for approval to build a 4,522 square foot addition to the rear of the Library after removal of Perkins Building. [18 Maine Street, Assessor's Tax Map 11, Block 4, Lots 2 & 3.]

Mr. Kling is recused from this review. Mr. Fellenz introduced the Agenda item.

Mr. Steve Doe of Sebago Technics addressed the Board and gave a brief summary of the Application. Some of the items mentioned were as follows:

- There will be 19 parking spaces available for library parking.
- New building will be used primarily for work space for staff and book sales
- New building will contain another ADA compliant bathroom
- Grass pavers will be removed in the parking area and replaced with asphalt
- There will be an additional ADA access at the back of the building along with a 2<sup>nd</sup> floor emergency egress with a fire escape stairwell.

Mr. Boak asked the Applicant why they were removing the grass pavers. Mr. Doe responded since the DEP does not allow a credit for using pavers in their impervious surface calculations along with the fact that the pavers don't function as well for maintenance purposes it would be more efficient to pave the entire surface evenly.

Mr. Boak noted there was site lighting mentioned in the application and asked if the Lighting Committee needed to approve this as well. Mr. Doe replied they are proposing building mounted lights but they are all under 100 watts. Mr. Gilliam added if there are fixtures that fall beneath a certain lumen amount the Lighting Committee typically doesn't need to review the Application.

Mr. Hilwig asked where the elevator will be located. Utilizing the enlarged architectural drawings, Mr. Doe indicated on the plans where the elevator would be located in the rear of the building near the A/C unit.

Mr. Fellenz opened the Public Hearing. There were no comments or questions from the public.

Mr. Doe added that at the last meeting they were still waiting on the Fire Marshall's review and one of their comments was to make the back access to the building an ADA ramp so there will be an adjustment in the lot coverage to include that ramp. Mr. Doe assured the Board that additional area would not put the total lot coverage over the Ordinance requirement.

Mr. Boak asked about the water sprinklers for the building. Mr. Doe replied the Water District is allowing us to tap into the hydrant in the front of the building and there is a letter in the Application detailing that.

Mr. Hilwig expressed his approval to the Applicant about adding an additional handicapped entrance.

There were no further questions or comments. Mr. Fellenz closed the Public Hearing.

Mr. Hilwig made a motion to approve the Application. Mr. Grady seconded the motion and the vote was unanimous. Mr. Boak was assigned as Case Manager to prepare the Findings of Fact to be read at the next Planning Board meeting.

**3. 160502 Sandpiper Capital Management II, LLC (Ebs Cove Subdivision) / Sebago Technics, Authorized Agent –Final Subdivision Review – Public Hearing** – for approval to create an eight (8) lot subdivision. [Ebs Cove Lane, Assessor's Tax Map 21, Block 009, Lot 52 (portion) in the Village Residential Zone.]

Mr. Fellenz introduced the Agenda item.

Mr. Steve Doe of Sebago Technics addressed the Board stating this is the final plan proposal for an 8-lot subdivision on a 9 ½ acre parcel off of Turbat's Creek Road. Mr. Doe added the proposed 8 lots meet the lot size for the district, the road will be built to town standards and all lots will have public water and sewer. Mr. Doe concluded his presentation by stating the open space area will have a storm water basin and there is also a 6 foot wide path at the end of the cul-de-sac that leads down to the creek that will have a small rack for storage of kayaks or canoes.

Mr. Fellenz reminded the Board and the audience in attendance that this Application has completed the preliminary process and is now applying for final approval.

Mr. Doe noted they are still awaiting approval from the Board of Selectmen and the Sewer Superintendent.

Mr. Fellenz opened the Public Hearing.

Mr. Steven Price of 31 Turbat's Creek Road addressed the Board asking for clarification on the Applicant's request to not provide 15% of open land in the subdivision. Mr. Doe responded stating there is a provision in the Land Use Ordinance that states a payment may be made in replacement of the 15% requirement so that the town may purchase land in another area that is more desirable. It was the developer's choice to ask the town if they could use that option, Mr. Doe added.

Mr. Kling arrived at the meeting and resumed the role of Chairman of the Planning Board.

Mr. Grady commented Mr. Price also asked if the town has considered what to use the money for from the open space payment. Mr. Gilliam responded that according to the town regulations the money can be used to purchase other open space areas or other recreational purposes. Those funds would be deposited with the town and any expenditure would be part of the annual budget presentation, Mr. Gilliam added.

Mr. Gilliam also commented this payment in lieu of open space option has been in the Subdivision Regulations for some time but to his recollection it is the first time it has been used.

Ms. Linda Ward, also of 31 Turbat's Creek Road addressed the Board asking if the reason for the 15% open space requirement is to preserve land in Kennebunkport or for the purpose of the subdivision to have an outdoor recreation area. Mr. Kling responded it was probably for both reasons why that requirement was made.

Ms. Ward commented there is a constant path of deer and other animals that cross the street to the proposed subdivision and asked if there was any consultation with wildlife biologists. Mr. Kling replied the town's Subdivision Regulations are based on the Southern Maine Regional Planning Commission's regulations and if there was a vernal pool or protected species habitat then a study would have been done; but that is not the case in this instance. Ms. Ward expressed her concern about those animals that will continue to cross the road to the proposed subdivision.

Mr. Kling read the following regulation from the Land Use Ordinance: "The payment in lieu of dedication shall be deposited into a municipal land acquisition or improvement fund" and suggested the Planning Board remind the Board of Selectmen that money is to be used only for that purpose and not placed in the town's general funds.

Ms. Sarah Young of 93 Wildes District Road addressed the Board to share her concerns regarding the purchasing of open space and asked the Planning Board to review the wording in the Ordinance in light of the recent subdivisions such as High Point Farms. Ms. Young also suggested the town examine their policy on responsible growth.

Ms. Young also expressed her concern that Bufflehead Lane, which is a connecting road from the proposed subdivision to Cape Porpoise, will be used as a convenient second egress. Mr. Doe assured Ms. Young the subdivision ends in a cul-de-sac and all construction traffic would come through the gravel road to the subdivision. Mr. Doe added there are no easements on the adjacent property that abuts Bufflehead Lane for those residents to utilize that road.

Citing Article 10.2.B Violations and Enforcement in the Subdivision Regulations which states; "*A person shall not convey, offer or agree to convey any land in a subdivision that has not been approved by the Board and recorded in the Registry of Deeds.*" Mr. Price commented a realtor has already put a sign up on the entrance of the property. Mr. Kling responded this is not an approved subdivision yet so there is nothing to sell. Mr. Gilliam stated the Board had a similar situation previously with the Wallace Woods Subdivision and did receive legal interpretation that advertising a subdivision is coming soon does not constitute a violation.

Mr. Hilwig offered his opinion he is adamantly opposed to any subdivision that provides anything less than the 15% open space and is concerned where the money will be spent. Mr. Hilwig suggested the Planning Board write a letter to the Board of Selectmen stating the money from the in-lieu of open space payment be used only for the purchase of land in the town.

Mr. Fellenz offered his opinion that from a broad philosophical point of view he disagrees with squeezing that number of lots into that area; however, as a Planning Board member he will be voting to approve this Application as it meets the Ordinance as it is written today.

Mr. Kling asked Mr. Gilliam if the town was comfortable with the proposed payment of \$119,204.78 in lieu of the 15% open space requirement. Mr. Gilliam replied on behalf of the town he does not have any issues at this point.

There were no further questions or comments from the audience members.

Mr. Kling closed the Public Hearing.

Mr. Fellenz made a motion to approve the Application. Mr. Grady seconded the motion and the vote was unanimous. Mr. Kling was assigned as Case Manager to prepare the Findings of Fact to be read at the next Planning Board meeting.

- 4. 160602 Andrew Molson, et als. / Eco-Analysts, Inc., Authorized Agent** – Site Plan Review – **Public Hearing** – for approval to build a 4' x 44' pier, a 3' x 26' ramp and an 8' x 16' float. [55 Maine Street, Assessor's Tax Map 10, Block 5, Lot 4A in the Village Residential Zone.]

Mr. Kling rejoined the Board and introduced the Agenda item acknowledging receipt of the DEP and Army Corps of Engineers approvals.

Ms. Lisa Vickers of Eco-Analysts, Inc. addressed the Board stating the Applicants own 2 adjacent parcels of land at 55 Maine Street. The second parcel of land is where the Applicants house sheep and wish to construct a dock for low impact watercrafts such as paddleboards and kayaks, Ms. Vickers added. Due to the limitations of the property, the dock is designed outside of the sewer easement so it does not exacerbate the existing erosion, Ms. Vickers stated, while granting partial tide access to Chicks Creek. The ramp will be stored upland during the off season, Ms. Vickers concluded.

Mr. Kling mentioned an initial concern in reference to Article 5.11.B.15 of the Land Use Ordinance which states: "Any accessory residential pier, walkway, dock or wharf, including ramps and floats, shall be no longer than a total length of one hundred (100) feet nor extend more than one fifth (1/5) of the way across a body of water." Mr. Gilliam added he did some preliminary measurements with the drawings to get a general idea where the ramp and float will be located relative to the adjacent shore and did not see any issues with its location. Ms. Vickers added the total length is approximately 52 feet.

Mr. Kling asked if the Board of Selectmen have approved this proposal. Mr. Gilliam confirmed it was approved by the Board of Selectmen.

Mr. King opened the Public Hearing. There were no comments or questions. Mr. Kling closed the Public Hearing.

Mr. Boak made a motion to approve the Application. Mr. Hilwig seconded the motion and the vote was unanimous. Mr. Grady was assigned as Case Manager to prepare the Findings of Fact to be read at the next Planning Board meeting.

- 5. 160701 Robert H. Brown Jr. and Laura J. Ross, (Cleaves Wood Phase II Subdivision) / Longview Partners, LLC, Authorized Agent** – Preliminary Subdivision Review – **Initial Review** – for approval to create an eight (8) lot subdivision. [Oakwood Drive, Assessor's Tax Map 24, Block 004, Lot 4L in the Cape Arundel Zone.]

Mr. Kling introduced the Agenda item.

Mr. Jim Logan of Longview Partners representing the Applicants addressed the Board stating this proposal is for an 8 lot subdivision. Mr. Logan added Phase I of the Cleaves Wood Subdivision was approved in 1985. Mr. Logan gave a brief overview of the subdivision noting they have reserved 22% of the land as open space which consists of the only sensitive natural resources on the property. Mr. Logan also noted the plan reflects a voluntary 25foot setback from the wetlands.

Mr. Kling asked about a letter from Allan Moir dated June 23<sup>rd</sup>, 2016 that stated he would like obstructions removed. Mr. Logan responded there is a gate beyond the limits of the subdivision which can be easily removed. Mr. Logan added he believes the Fire Chief wishes to ensure there is never a restriction accessing the road in the event of an emergency and the Applicants understand that request.

Mr. Kling asked if there have ever been any issues with wells or septic systems for the existing properties. Mr. Gilliam responded No he was not aware of any current issues with any malfunctions of septic systems in the area or with any well water issues.

Mr. Logan pointed out he has included in the back of the Application all information on the septic systems and offered to provide a list of the wells in this neighborhood including their depths and yields.

Mr. Kling noted there are already a number of homes in this area and suggested there perhaps be a provision in the Homeowner's Covenants that the road must be kept open at all times. Mr. Kling also suggested adding an item in the homeowner's restrictions that addresses Article 11.1.C of the Subdivision Regulations which states: *"The homeowner association covenants will include a requirement to follow the*

*guidelines in the most current edition of “Best management Practices for the Application of Turf Pesticides and Herbicides” as published by the State of Maine Pesticide Control Board.*“

Mr. Boak commented the letter from Allan Moir states the water supply is sufficient for 4 new lots but the Applicant is proposing 8 lots. Mr. Logan replied when Mr. Moir was requested to do his review he had only the Sketch Plan information and offered to speak with Mr. Moir to make sure he has the most recent plan to review.

The Board members and Mr. Logan had a brief discussion regarding an extension of the public water line into a neighboring area. Mr. Gilliam clarified that the extension they are discussing is a private line where each individual property is served by its own force main that is believed to be operating currently at capacity.

Mr. Kling asked where the closest public line is in that area. Mr. Gilliam replied the closest point is at the intersection of Ocean Avenue and Turbat's Creek Road which is a significant distance away from the proposed subdivision.

Mr. Kling asked if the utilities would be underground. Mr. Logan replied yes they are in the road now.

Mr. Logan asked the Board for a waiver on the financial capacity. Mr. Kling added the intent for that is the lots will sell and the development will be part of the new owner's responsibility. Mr. Gilliam commented it is rare to have an Application that has very little improvements and that the Board is really just approving the division of land.

Mr. Kling noted the Applicant is requesting a waiver to use the LiDAR maps available instead of the standard topographical maps. Mr. Logan explained they feel the LiDAR data is fair and accurate. Mr. Gilliam commented he has no issues with using the LiDAR maps.

Mr. Boak suggested the paragraph describing the traffic conditions might need some rewording as it says the maximum grade is supposed to be 8% when it is really 12%. Mr. Jason Vafiades of Vafiades Engineering & Design explained there is a small stretch of the road that is at a 12% slope yet all other portions of the road fall within the 8% slope.

There were no further questions from the Board members.

Mr. Fellenz made a motion the Application is complete. Mr. Boak seconded the motion and the vote was unanimous. A Public Hearing will be held at the next Planning Board meeting on August 17<sup>th</sup>, 2016.

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

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