



Town of Windham

Town Offices
8 School Road
Windham, Maine

Meeting Minutes - Final

Planning Board

Monday, March 27, 2017

7:00 PM

Council Chambers

Call To Order

Roll Call and Declaration of Quorum

The meeting was called to order by Chair, David Douglass. Other members present were: Margaret Pinchbeck, Keith Elder, Bill Walker, and Nick Kalogerakis.

Planning Director, Ben Smith, was also present.

[PB 17-015](#) Approval of Minutes: March 13, 2017

Attachments: [Minutes 3-13-17 - draft](#)

Keith Elder made a motion to accept the minutes as written.

Seconded by Margaret Pinchbeck.

Vote: Four in favor. No one opposed. Bill Walker abstained.

New Business

[PB 17-017](#)

Attachments: [17-06 Whites Bridge Road Condominium Amendment 03-27-2017](#)

[Whites Bridge Condos Subdivision Application 2017_3_6](#)

[Amended Subdivision Plan](#)

[Erosion Control Plan](#)

[Woldbrook Approved 10-22-84](#)

David Douglass stated that he owned abutting property. The application did not affect him; he had no standing or bias for or against the project.

No one on the Board expressed concern about that.

Bill Walker stated that he was the president of the Windemere Homeowners' Association. There had been litigation between the associations regarding property rights and what could and could not happen on common area lands. He stated he was biased in regard to the application and recused himself from the project.

Dustin Roma, a civil engineer with DM Roma Consulting Engineers, was present representing the applicant, the Whites Bridge Owners' Association. He explained:

- *The Whites Bridge Owners' Association was the first phase of the Windemere*

Subdivision. It included some common area on Sebago Lake, a boat launch, a marina, and a parking area. Phase I was the oldest part of the neighborhood and the only part that was condominiums.

- *There had been several subdivision amendments.*
- *The subdivision had also gotten Site Location of Development Act permits from DEP, which had been amended several times over the years.*
- *There had been other subsequent minor Planning Board and DEP amendments on more of an individual lot basis and for land close to the water tower.*
- *The subject parcel was a little over 12 acres.*
- *Net residential density calculations had been performed on the parcel. It could support a buildable lot, based on the town's current zoning regulations.*
- *Test pits had been conducted.*
- *Woldbrook Drive was a private, paved road.*
- *Portland Water District had a watermain in the road. It would be used to serve the project.*
- *A stormwater management Site Location of Development Act amendment had been submitted to DEP.*
- *The condominium association was working with their attorney to review the condominium documents and the court decisions from past litigations regarding use rights of the common areas. There were certain stipulations regarding shared costs for the shared entities and how those costs were allocated.*
- *The information they presented to the Planning Board would be in support of creating one additional residential lot subject to compliance with town ordinances.*

Ben Smith explained:

- *The purpose of subdivision review was to be sure that any proposal that came before the Planning Board conformed with State and town zoning ordinances.*
- *The Planning Board would be looking at adequate water supply, minimum lot size, traffic impacts, lighting impacts, those kind of general subdivision criteria. Right, title, and interest, and the legal authority to create a lot would be considered.*
- *There were instances in town where a homeowners' association or condominium group had other more private regulatory roles. The scope of Planning Board review was to be sure that any potential division or amendment to an existing subdivision would conform to the local regulations as well as state permitting requirements.*

The Board commented:

- *What association was it that wanted to sell the lot?*
- *What was the lot currently used for?*
- *Was the land originally dedicated to open space?*

Mr. Roma replied:

- *It was the Whites Bridge Owners' Association which was comprised of only the condo owners and not the remaining single family lots.*
- *The lot was currently undeveloped forest land. Just under an acre was proposed to be conveyed. The remaining land was proposed to be a forested buffer, primarily for stormwater management and phosphorous control.*
- *The review process had been different when the land was developed and so it wasn't likely reviewed as intensely for open space.*

Keith Elder made a motion to schedule a sitewalk.

Seconded by Margaret Pinchbeck.

Vote: All in favor.

Margaret Pinchbeck made a motion to schedule a public hearing.

Seconded by Keith Elder.

Vote: All in favor.

Margaret Pinchbeck made a motion to open up public comment.

Seconded by Nick Kalogerakis.

Vote: All in favor.

Public Comment:

Bill Walker, Windemere Homeowners' Association – He thought one of the things that had to be brought to the Board's attention was that typically the declaration of covenants and restrictions did not fall within the purview of the Board. One of the things that was critical to that component was that the lawsuit had been in regard to the private rights of the two associations and clarifying the declaration of covenants and restrictions. One of the things that had been determined was that all the roads, the drainage, and those amenities were for the exclusive use of the two associations and no one outside of the associations. In all actuality, from the town's perspective, Whites Bridge did not have the ability to sell the land that was not part of their association and provide road access. What the Board would be doing was creating a lot that would not have road access and would be a nonconforming back lot. He had been in touch with Counsel. There was case law in the State of Maine that talked about such lawsuits and that when those things were clearly stated the Board should take those things into consideration because it was the guide that the land was created under. He thought there were some instances that did affect the ordinance. He had reached out to the president of Whites Bridge Owners' Association to try and work through what actual options were available.

Wayne Jackson, Woldbrook Drive – In attendance was a concerned group of citizens hoping that before the Board made a finalized decision all aspects of the lot being broken off and utilized would be looked at. They felt that they had a turmoil relationship between the two associations. They were trying to live together, trying to make sure that everyone's needs were fit. Bringing the lot in and opening the door to all the ramifications that it brought onto the street and access to it. All the possibilities of having a smaller sized lot should be explored. He requested that Board to take its time and go through it systematically.

Bill Walker rejoined the Board.

PB 17-018

17-07 Gambo Public Boat Launch. Site plan amendment and Shoreland Zoning permit. S.D. Warren Company to request review of a public boat launch facility on the Presumpscot River. The subject property is located at Soccer Drive and identified on Tax Map: 5 Lot: 7, Zones: Industrial (I) and Resource Protection (RP).

Attachments: [17-07 Gambo Public Boat Launch_03-23-17](#)[Gambo Boat Launch Site Plan Application](#)[GAMBO BOAT LAUNCH SITE PLAN](#)[CONSTRUCTION DETAILS](#)[Shoreland Application cover_03-22-17](#)[DEP Permit by Rule_03-23-17](#)[SOCCER FIELD AMENDMENT 10-09-2009](#)

Keith Elder was a member of the Windham Youth Soccer, which owned the property. He recused himself.

Dustin Roma, a civil engineer with DM Roma Consulting Engineers, was present representing the SD Warren Company. He explained:

- SD Warren owned and operated most of the dams on the Presumpscot River from Sebago Lake to the Westbrook mill. All of those dams came with regulations and licenses from the Federal Energy Regulatory Commission. The licenses were generally for a term of about 40 years. They also had water quality certifications that had to be filed with the DEP. In addition to the public safety and energy components of it there were a number of public benefit and recreation obligations that were imposed on the license holder. In this particular case one of the identified needs was a public hand-carry boat ramp.*
- The property had changed ownership during the course of their preparation, from the Portland Water District to the Town to the Youth Soccer Association. They had worked with Town Council to get the ability to have a public boat launch on the property. That had been included in the deed to the Youth Soccer Association as a desired objective. Easement language identified the area at the end of the parking area and included the ability to pass over the existing gravel road.*
- The site plan had been completed.*
- A contractor was selected.*
- Funds had been appropriated in the applicant's capital expenditures for the fiscal budget.*
- DEP permits had been granted for the boat launch.*
- They did not yet have permits from the Army Corps of Engineers. Army Corp was concerned with impact to a direct waterway. In this case the only impact was a small concrete plank that would be set into the water as a convenience. The intention was for the boat launch to be used by smaller, hand-carry boats, kayaks, and canoes.*
- If the Army Corp didn't issue a permit for the concrete plank the applicant would withdraw the request for the plank from the Planning Board application.*
- A guardrail would be replaced so that people couldn't back their boats into the water.*
- They would work around the Youth Soccer schedule so there was no disruption to the soccer season.*
- They would increase the length of pavement up the steep slope to where it levelled out.*
- Some parking spaces would accommodate trailered vehicles and be marked for trailer parking only.*
- The level spreaders were sited so as to optimally capture as much area that was tributary to them while still providing a meaningful amount of buffer. The land slope was a little steeper than normal but in this case it was mitigating velocities and was the best practice.*
- The applicant had agreed to install new guardrails, install boulders, and make*

improvements to the drive.

- *With the boat launch in Inland Fisheries and Wildlife would stock the river.*

Ben Smith explained this was an amendment to an approved site plan. The scope of review was focused on the new changes. A condition of approval could state that an amendment would be required if and when underwater structures, the concrete plank, were proposed.

The Board commented:

- *How would clearing trees affect the resource protection zone?*
- *If the Army Corp of Engineers didn't provide permitting, would it be pursued at a later time?*
- *What about handicap parking?*
- *Who would do the maintenance and upkeep?*
- *Would signage ensure safety with the increase of traffic?*
- *Would there be any overflow parking?*
- *Was there adequate room for a vehicle with a trailer to turn around at the end of the dirt road?*
- *How would the area be protected from erosion?*

Mr. Roma replied:

- *They would just clear enough land to access the water.*
 - *They had submitted applications to US Fish and Wildlife and were being vetted for botanical studies and bat studies etc. If they required expensive studies they wouldn't put the concrete plank in the water.*
 - *The Bureau of Parks and Lands didn't require the whole site to be handicap accessible. Parking could provide some degree of accessibility but it wouldn't go all the way down to the resource.*
 - *The applicant would be responsible for the facility and contribute to the on-going maintenance costs of the entire road. The easement agreement was for the term of the license and was assumable by the Town for continuation of the boat launch.*
 - *Signage currently existed. Probably the most boat launch use would occur during times when the area wasn't busy for soccer.*
 - *The easement didn't speak to being able to park outside of the designated easement area. If that happened maybe parking would need to be expanded.*
 - *There was adequate room to turn around provided the area wasn't packed with parked vehicles.*
 - *Concrete planks and rip-rap would protect down to the water on both sides. If there was erosion they would be able to do maintenance.*
- Stormwater would hit a basin and spill over the rip-rap into the forested area so it would be slowed down.*

Margaret Pinchbeck made a motion to schedule a sitewalk.

Seconded by Bill Walker.

Vote: Three in favor. Nick Kalogerakis opposed.

Margaret Pinchbeck made a motion to schedule a public hearing.

Seconded by Bill Walker.

Vote: All in favor.

Keith Elder rejoined the Board.

PB 17-019

17-08 Moose Landing North Recreation Vehicle Display Lot. Major site plan sketch plan review. Moose Landing North, LLC to request review of a parking area for outdoor retail sales. The subject property is located at Roosevelt Trail and Danielle Drive and identified on Tax Map: 15 Lot: 2, Zone: Commercial III (C-3).

Attachments: [17-08 Moose Landing North Recreation Vehicle Lot 03-23-17 Sketch](#)
[Moose Landing North LLC Site Plan Sketch Application 2017_3_6](#)
[Moose Landing RV Site Plan Sketch 2017_3_6](#)
[Peer Review_03-13-17](#)

Dustin Roma, a civil engineer with DM Roma Consulting Engineers, was present representing Moose Landing North, LLC. He explained:

- *The applicant was in the process of purchasing Lee Family Trailers. They were also interested in the abutting nine acre parcel which was located behind Tractor Supply.*
- *Access to the nine acre parcel was available from Danielle Drive and Route 302.*
- *The property was located in a Commercial 3 (C3) zone.*
- *The applicant was proposing a gravel parking lot area for RV display. The town considered the use category to be automobile sales; that use was not currently allowed in a C3 zone. The nonconforming use currently existed on the conforming Lee Family Trailer lot. The applicant proposed to expand that use.*
- *The land use ordinance allowed the expansion of a nonconforming use by up to 100% with Zoning Board of Appeals (ZBA) approval. They were in the process of making application to the ZBA to expand the use onto a portion of the nine acre abutting property.*
- *The town's legal counsel had reviewed the proposal to ensure it was in conformance with the nonconforming uses section of the land use ordinance. Counsel's opinion had been that the applicant could expand the lot to allow the expansion of the use. The boundaries of the lot would be altered by joining four of the nine acres with the current Lee Family Trailer Sales property.*
- *A new roadway, designed to an industrial road geometry standard, was proposed off of Danielle Drive.*
- *They anticipated coming to the Board with a four lot subdivision application on the remaining acreage.*
- *The Tractor Supply lot had been divided from the parent parcel more than five years ago and was exempt from inclusion with the subdivision. However, it had to be taken into consideration for site location requirements.*
- *They anticipated that the proposed gravel parking area would shed water to a stormwater pond in front. A second stormwater pond would take all the run-off from the proposed lots as well as the majority of the expanded trailer sales lot.*
- *Public water and gas service would be extended from Danielle Drive.*
- *Although the Tractor Supply access from Route 302 was part of the property it did not make logistical sense to use it for the current project because of additional wetlands impacts and the desire not to burden the Tractor Supply driveway.*
- *No buildings were proposed as part of the site plan.*

The Board commented:

- *Would people be driving to the display area?*
- *Where would stormwater overflow go?*
- *What about fire protection?*

Mr. Roma responded:

- Currently, customers parked in a parking area and were shuttled around the site on golf carts. Customers would not be driving to the proposed display area.
- They proposed to divide stormwater so most of it went to the back. A full drainage analysis would be completed.
- Fire protection plans had not been submitted.

Margaret Pinchbeck made a motion to schedule a sitewalk.

Seconded by Bill Walker.

Vote: All in favor.

Margaret Pinchbeck made a motion to schedule a public hearing.

Seconded by Nick Kalogerakis.

Vote: Four in favor. Keith Elder opposed.

PB 17-021

17-09 Clark Farm II. Minor Subdivision sketch plan review. Laurence & Kathryn Clark to request review of a three lot subdivision. The subject property is located at Webb Road and Swett Road and identified on Tax Map: 6 Lot: 51, Zone: Farm (F).

Attachments: [17-09 Clark Farm II Subdivision Sketch 03-27-17](#)

[Clark Farm Sketch Plan Application](#)

[Sketch Plan Clark Farm II 3-3-17 11x17](#)

Larry Clark was present representing himself. He explained:

- They had 163 acres between Swett and Webb Roads which they wanted to sell.
- Maine Farmland Trust had agreed to buy 142 acres and to keep it as farmland.
- He proposed to keep the remaining 21 acres which he was not planning to develop.
- He had requested some waivers because there would be no impact created.

Ben Smith clarified:

- The Clark Farm property was part of hundreds of acres that Mr. Clark had owned for many years.
- The farmhouse and ten acres of land had been divided off previously. This was the first lot.
- The Maine Farmland Trust was proposing to buy 142 acres. The property would have a conservation/agricultural easement on the land. This would create a second lot.
- The remaining 21 acres along Webb Road would constitute the third lot.
- Because the divisions created three lots in a five-year period it was considered a subdivision and required Planning Board approval.
- The lot with the farmhouse and ten acres had already been sold. It was considered a part of the subdivision because it had been in common ownership within the last five years, even though the Clarks didn't currently have ownership of it. It was not a numbered subdivision lot.

It was not uncommon for lots that had been in the same ownership within the past

five years, but which were no longer in common ownership, to be shown on a subdivision plan. Such lots were not encumbered by any requirements of other lots which were in common ownership and that went through review. They were shown on the plan for subdivision purposes, but were not part of the subdivision application because they were not owned by the applicant at the time of subdivision review.

Once a lot was encumbered by subdivision review it was governed by the review and dividing it would require subdivision amendment.

- It was possible to grant waivers for a part of the property.

Bill Walker made a motion to schedule a public hearing.

Seconded by Margaret Pinchbeck.

Vote: All in favor.

[PB 17-022](#)

17-10 Weeks Farm. Major Subdivision sketch plan review. Great Lots of Maine LLC to request review of a 17 lot residential subdivision. The subject property is located at Overlook Road and identified on Tax Map: 10 Lot: 30, Zone: Farm Residential (FR).

Attachments: [17-10 Weeks Farm Sketch 03-27-2017](#)

[Weeks Farm sketch application](#)

[Weeks Farm sketch plan](#)

Paul Hollis was present representing his company, Great Lots of Maine, LLC. He distributed a new sketch plan.

Bill Walker made a motion to accept the hand-out.

Seconded by Keith Elder.

Vote: All in favor.

Mr. Hollis explained:

- They proposed a 17 lot subdivision accessed from Overlook Road which was off of Albion Road.
- The property consisted of just over 22 acres on both sides of Overlook Road.
- Overlook Road was a private road which was plowed by the town. Beginning in 375 feet from Albion Road was 1,750 feet of the road which was owned as part of the property. There was a 16 foot easement for the property that continued to Albion Road.
- The land was in a Farm Residential (FR) zone.
- Lots would have a minimum of 50,000 square feet and a minimum 150 feet of road frontage.
- Wetland delineations had been completed and were shown on the plan.
- A 24 foot easement had been obtained across abutting property so that public water and underground electric could serve the subdivision.
- The proposed subdivision road would be private and maintained by the homeowners' association. It would be constructed to a private road standard. The first 375 feet in from Albion Road would be 40 feet wide. Beyond that the right-of-way would be 50 feet wide to the intersection with Joe's Road. Pavement would be 30 feet wide with a 20 foot travel way and a five foot wide designated walkway on each

side of the road.

- They had done 24 passing test pits that were suitable for four to five bedroom houses.
- Engineering and stormwater management were underway.
- It appeared that there was no deeded access to the lake.
- The property was not in the Highland Lake Overlay District.
- A vernal pool study would be done.
- There was some ledge on the property. The plan would contain a note that required any necessary blasting to be conducted through the developer.
- A 15 foot wooded buffer would be maintained along the roadway on both sides of the road.

Margaret Pinchbeck made a motion to schedule a sitewalk.

Seconded by Nick Kalogerakis.

Vote: All in favor.

Margaret Pinchbeck made a motion to schedule a public hearing.

Seconded by Bill Walker.

Vote: All in favor.

Adjournment

Keith Elder made a motion to adjourn.

Seconded by Margaret Pinchbeck.

Vote: All in favor.