

Draft 8/10/06 revised 8/15/06 with Yerxa input

Minutes  
Town of Waldoboro  
Planning Board Meeting  
August 9, 2006

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Roll Call

The meeting was called to order by chairman Bo Yerxa at 7:01 p.m in the meeting room at the Municipal Building. Other members present were Carlo Bianchi, Chuck Campbell, Terry Gifford, and JoAnn Myers. Code Enforcement Officer John Black was present. There was no audience other than the applicants.

1. Minutes of July 12 and July 26, 2006

On motion of Myers/Campbell, the Board voted 5 – 0 to accept the July 12 minutes as distributed. On page 2 of the July 26 ordinance revision meeting minutes, Myers asked why the parenthetical text under “Waldoboro residents” is in italics. Yerxa said this was his remark, made at the meeting, and that it could be changed to the same type face as the rest of the text. On motion of Myers/Campbell, the Board voted 4 – 0 – 1, Gifford abstaining, to accept the minutes of July 26 as distributed.

The minutes of the June 28 special Planning Board meeting on ordinance revision were not reviewed at tonight’s meeting.

2. Approval of Two-Lot Feylers Corner Road Subdivision, MacLennan, 1340 Feylers Corner Road (Tax Map R20 Lot 17)

Anne MacLennan Perkins and surveyor Robert Furman of Lincoln Surveying Company were in for review of a proposed two-lot subdivision on Feylers Corner Road near Old Augusta Road. Perkins has previously divided the property and conveyed a 2.66-acre lot to Danielle and Robert Lee in 2005. This lot is shown as Lot 1 of the proposed subdivision. Perkins wishes to divide the remainder of the property into two lots of 4.1 acres and 9.5 acres. Subdividing a property to create three lots within five years requires subdivision review by the Planning Board.

Submission Checklist

The \$150 application fee has not yet been paid.

Existing Conditions Plan

The following have been submitted: 4a title block; 4b land use district; 4c existing contours (copy of U.S. G. S. topographic map with 20-foot contour interval); 4d buildings; 4e existing streets and driveways; 4f existing utilities; 4g significant features (stone walls); 4i existing surface water drainage; 4l location of nearest fire-fighting water supply (Alford Brook, 0.3 mile; Levensaler

Brook, 0.7 mile; Little Medomak Pond, 2.0 miles); 4m name of professional who prepared plan. Fire Chief Dick Glidden said he has no concern about firefighting water supply for these two lots and will probably use a tanker truck to transport water from the fire station.

The following elements of the existing conditions plan are not applicable: 4j existing signs, 4k easements.

Applicable and waived: The applicant requests waiver of existing conditions requirements 4c, on-site survey of existing contours, and 4h, a wetlands delineation by a professional wetlands delineator. Board members discussed whether the wetlands delineation can properly be waived. The lots are large and located on a well-drained hillside. Bianchi noted that any wetlands are located downslope from the likely house sites. In lieu of a wetlands delineation, the Planning Board required that a 100-foot by 100-foot minimum net developable area be shown graphically on the subdivision plan for Lot 2 and Lot 3, with a note on the plan that more than the minimum 10,000 s.f. of developable area is available on each lot. The location of the nominal 100-foot by 100-foot square is not binding and does not represent the required location of a future house.

On motion of Bianchi, the Planning Board voted 5 – 0 to find all elements of the existing conditions plan either received, not applicable, or waived.

#### Proposed conditions plan

The following checklist items for the proposed subdivision have been received: 5a title block; 5b lot lines; 5d locations and sight distances of driveways; 5f location of building (existing house on Lot 1); 5n professional certification; 5o approval block. The following are not applicable: 5e easements, rights of way; 5g location of signs; 5j location of parcels dedicated for public use; 5l utility plan. The following are requested to be waived: 5c contours at two-foot intervals; 5h soil erosion and sediment control plan; 5i stormwater management plan; 5m landscaping plan including buffering and screening.

On motion of Bianchi/Campbell, the Board voted 4 – 1, Myers opposed, to waive the following elements of the subdivision plan, on grounds that the application is for a two-lot residential subdivision with large lots (4.1 acres and 9.5 acres), involving minimal soil disturbance, and that any further subdivision of either lot will require Planning Board review as an amendment to the subdivision plan. The elements waived are: 4c existing contours; 4h wetland delineation; 5c two-foot contours; 5h soil erosion and sedimentation control plan; 5i storm water management plan.

In a separate vote, on motion of Gifford/Myers, the Planning Board voted 5 – 0 to waive requirement 5 m, a landscaping plan including buffering and screening, for the reasons given above for the other waivers.

The Board then went through the checklist for written documentation and supporting information.

The following items have been received: 6a right, title or interest in the property; 6b description of proposed use; 6n soils; 6p subsurface disposal system report; 6x estimated volumes of water and sewerage.

The following checklist items were found not applicable to a two-lot subdivision involving only creation of lots: 6c air emissions; 6d buffers (applies to industrial or commercial uses near residential uses); 6e construction standards; 6f electrical disturbances; 6g lighting and glare; 6h hydrological ground water assessment (required for projects involving 2,000 or more gallons per day); 6j noise; 6k off-street parking and loading; 6l refuse disposal; 6m signs; 6q storage of materials and equipment; 6t traffic impact analysis; 6u evidence of technical capability; 6v evidence of financial capacity; 6w construction schedule; 6y statement from utility company.

The following checklist item was waived: 6r stormwater management plan, per previous vote to waive item 5i stormwater management plan, on grounds that the application is for a two-lot residential subdivision with large lots (4.1 acres and 9.5 acres), involving minimal soil

disturbance, and that any further subdivision of either lot will require Planning Board review as an amendment to the subdivision plan. The applicant's written waiver request points out that no new road construction is involved in creation of the two lots, therefore there is no soil erosion and no need for sedimentation control or stormwater management until such time as someone builds on the lots.

There was extensive discussion of whether the subdivision plan dated July 12, 2006, meets checklist item 6s street access and driveways and ordinance Article 4 Section S 11 Number of Driveways (p. 4-21 of Land Use Ordinance as amended June 15, 2006). Planning Board members agreed that the proposed subdivision is a low-volume traffic generator with less than 25 vehicle trips per day. Board members discussed whether the ordinance language in section 11 a on p. 4-21 limits the subdivision to a single driveway onto Feylers Corner Road, and if so, whether the Planning Board has discretion to waive this requirement. Furman said a common driveway on the lot line between Lots 2 and 3 as shown on the subdivision plan will not meet the 350-foot sight distance requirement. He said the common lot line could be changed to the proposed location of the driveway on Lot 2, which has the required sight distance.

A motion by Bianchi/Campbell that the street access shown on the July 12 subdivision plan, with a driveway on each lot, is acceptable, failed by a vote of 2 – 3 (Gifford, Myers and Yerxa opposed). A motion by Gifford/Myers that a common driveway entrance serving Lots 2 and 3 be placed on the subdivision plan as a condition of approval, also failed by a vote of 2 – 3 (Bianchi, Campbell and Yerxa opposed). Planning Board members agreed by consensus to accept the driveway configuration shown on the subdivision plan, with one driveway on each lot, and to find checklist item 6s street access and driveways applicable and conforming.

On motion of Campbell/Myers, the Board voted 5 – 0 to find the subdivision application complete, except for the fee, yet to be paid, and the net developable acreage calculation, to be satisfied by Furman's placing a 100-foot by 100-foot minimum net developable area on the subdivision plan for Lot 2 and Lot 3 with a note on the plan that more than the minimum developable area is available on each lot.

The Board then went through the Worksheet for Planning Board Review.

#### Article 4 General Performance Standards

The following general performance standards were found not applicable: A air emissions; B buffer areas; C construction standards; D electrical disturbances; E Historic Village District architectural standards; F hydrogeologic assessment of groundwater impacts; G lighting and glare; I noise; J parking and loading; K phosphorus control (Black said the nearest brook, Alford Brook, drains to the St. George River, not to a great pond); L refuse disposal; N signs; Q storage of materials; T street/road standards; U traffic impact analysis; V water quality impacts.

The following general performance standards were found applicable and conforming: H net developable acreage (will be on final subdivision plan); M sanitary provisions; O soils; S street access and driveways.

General performance standards P, soil erosion and sedimentation control, and R, stormwater management, were waived, on grounds that the application is for a two-lot residential subdivision with large lots (4.1 acres and 9.5 acres), involving minimal soil disturbance, and that any further subdivision of either lot will require Planning Board review and amendment of the subdivision plan.

#### Article 5 Specific Performance Standards

Planning Board members agreed that none of the specific performance standards listed in the Article 5 checklist are applicable.

Article 6 Planning Board Approval Criteria for Subdivisions (see Art. 6 H)

The following approval criteria were found applicable and conforming: 1 pollution; 2 sufficient water; 5 solid waste and sewerage waste disposal; 6 aesthetic, cultural and natural values; 7 conformity with town ordinances (with waivers); 8 financial and technical capability; 10 groundwater.

The following approval criteria were found not applicable: 4 highway or public road congestion; 9 shoreland zoning; 11 flood area; 12 freshwater wetlands; 13 river, stream or brook; 15 spaghetti lots; 16 lake phosphorus concentration; 17 impact on adjoining municipality; 18 access to direct sunlight; 19 exterior lighting; 20 buffering of adjacent uses; 21 noise; 22 storage of materials; 24 buffering of residential uses; 25 location of off-street parking; 26 hazardous waste.

The following approval criteria were waived, for reasons given in the original waiver votes above: 3 soil erosion and sedimentation control; 14 stormwater management; 23 landscaping.

On motion of Bianchi/Campbell, the Planning Board voted 5 - 0 that all Article 6 approval criteria are either applicable and conforming, not applicable, or waived.

On motion of Bianchi/Campbell, the Board voted 5 - 0 to instruct the Code Enforcement Officer to issue the appropriate permits for the MacLennan Feylers Corner Subdivision upon payment of the required fee and placement of a 100-foot by 100-foot minimum net developable area on the subdivision plan for Lots 2 and 3 along with a note on the plan that more than the minimum developable area is available on each lot. If the revised mylar is ready, Black will bring it to the August 16 Planning Board ordinance revision meeting for signature.

3. Discussion of Planning Board Procedures and Ordinance Interpretation

The following issues were raised in discussion.

A. Waivers

Gifford raised the question whether the Planning Board has the authority to waive items that are phrased "shall" in the ordinance. Yerxa agreed that in Maine Municipal Association training sessions, Planning Board members are told they cannot waive a requirement containing the word "shall". However, Campbell pointed out that Article 6 Section B 4. Waivers (Land Use Ordinance as amended June 15, 2006, p. 6-2) allows the Planning Board to waive "all or portions of the submission requirements" in certain cases, such as "where a proposed use is deemed by the Planning Board to have no discernable impact on adjoining property or the environment or public infrastructure".

Black and Planning Board members agreed that the reasons for the waiver must be given in the Planning Board minutes, as required by the ordinance (p. 6-2).

B. Lots in Subdivisions

The Planning Board should verify whether, if a lot is part of an approved subdivision, any subsequent division of that lot requires Planning Board review as an amendment to the subdivision. If so, how can this be enforced? Or alternatively, given sufficient acreage, can the owner of a lot in a subdivision create one new lot out of his property within a five-year period without triggering subdivision review?

C. Subdivision Driveways

1. Can each proposed subdivision lot that has frontage on a public road have a driveway entrance onto that road? How does General Performance Standard 4 S 11. a. Number of Driveways apply to subdivisions? Is each lot in the subdivision considered a separate use (or traffic generator), or is it the total number of lots in the subdivision that determines whether the use is low-volume or medium-volume? Does the ordinance require that adjacent lots in a subdivision have shared

driveway entrances, or is this only a recommendation? Myers suggested in future trying to find out how adjacent owners deal with a shared driveway.

2. Can the location of a driveway in a subdivision be changed from that shown on the final subdivision plan to another location without Planning Board review (and an amendment to the subdivision plan)? Does the Code Enforcement Officer have authority to grant a permit for a driveway at another location if it meets the required sight distance? Gifford said that if a shared driveway is required as a condition of subdivision approval, the location cannot later be changed without Planning Board review. CEO Black agreed.

#### D. Clearcutting

Gifford asked if the ordinance allows a landowner to clearcut right up to the property line with an abutting property, even if the trees are growing in a wetland. Other Board members thought there is nothing in the ordinance to prevent this, other than restrictions on clearcutting within the shoreland zone. Black said a landowner can plant trees to provide a vegetative buffer on his own land if he objects to the effect of the clearcut.

#### E. Need for Training Sessions

Black suggested there is a need for in-house training sessions for the Planning Board, perhaps involving Lincoln County planner Bob Faunce. Yerxa agreed there is a need to invest in more training for Planning Board and Board of Appeals members, and even Selectmen.

#### F. Changes to Checklists

The secretary noted that "written comments from municipal officials" should be added to the appropriate checklist. Campbell confirmed that the ordinance still contains language requiring written input from the fire chief, police chief, and EMS director. The Planning Board is not getting written input currently. It was suggested that the written comments be required 10 days in advance so that they can be included in the information packets sent out ahead of the meeting.

*The secretary suggests rewriting the checklists to make them self-explanatory, for example saying "will not cause undue water or air pollution on and off site" rather than "pollution", and "will not adversely affect the quality or quantity of ground water on or off site" rather than "ground water". This will also make it easier to determine whether a checklist item should be considered "applicable and conforming" or "not applicable".*

#### 4. Specific Questions

##### A. Indoor Riding Arena

Black said Bob Morin has horses on his property in North Waldoboro in the Rural District and wants to come in for approval to have an indoor riding arena. This use does not appear to be listed in the land use matrix. It would be a commercial use. Yerxa asked whether this use would come under agriculture. Could it qualify as a home occupation?

##### B. Maine Modular Two-Story Garage

Gifford asked Black to verify the description of the storage building on the Maine Modular and Manufactured Homes approved site plan. Were they authorized to build a two-story structure?

##### C. Wayne Brown Subdivision Homeowners' Association

Gifford asked another follow-up question, specifically whether Wayne Brown is doing anything about requiring people who buy lots in his subdivision to join a homeowners' association to maintain the private road. She said the Planning Board's understanding when the subdivision was approved was that the road would remain a private road, the Town would never be asked to take it over as a Town-maintained road, and a homeowners' association would be responsible for

road maintenance. Gifford said she has been advised by someone who bought a lot in the subdivision that there is nothing in his deed about being required to join a homeowners' association or being liable to pay for maintenance of the road. Black said it is his understanding that this is being worked on, and that language about the homeowners' association is going into the deeds.

Gifford suggested that if the homeowners' association was a condition of granting the permit for the subdivision, perhaps Brown should not be allowed to sell any more lots until the homeowners' association has been formed and is referred to in the property deeds. Black agreed that this should have been a stipulation, and that in that case it would be an administrative matter, not one for the Planning Board.

5. Signing Final Subdivision Plan, Noyes Road Subdivision, Maine Modular and Manufactured Homes, 200 Noyes Road (Tax Map 24 Lot 6A)

Planning Board members present signed the mylar original of the approved subdivision plan for Maine Modular's six-lot subdivision at 200 Noyes Road.

6. Appeal of Planning Board Denial of Permit for Self-Storage Units in Rural District, Brown, 120 and 166 Controversy Lane (Tax Map R16 Lot 62-1)

Wayne Brown is appealing the Planning Board's denial of a permit for his proposed self-storage units on Controversy Lane. The basis for denial was that commercial self-storage facilities are not a permitted use in the Rural District according to the land use matrix, nor similar to a permitted use in the Rural District (see Item 4 in June 28, 2006 minutes). The Board of Appeals will hear his appeal on Tuesday August 15. The meeting starts at 6:30 p.m. Campbell agreed to be present at 7:00 p.m. to represent the Planning Board.

7. Next Planning Board Meeting: Ordinance Revision Meeting #2, August 16, 7:00 p.m.

Yerxa is unable to attend the August 16 meeting.

Adjournment: The meeting was adjourned at 9:45 p.m.

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William Yerxa, II, Chairman

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Carlo P. Bianchi

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Charles Campbell

Submitted by:

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Terry Gifford

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Susan S. R. Alexander

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JoAnn Myers