

Minutes for Tuesday, July 19, 2011 Planning Board Meeting

1. Call to Order: Chairman David Johnson called the meeting to order at 7:05 PM.

2. Introduction of Attendees: Present were: Chairman David Johnson, Secretary Laura Chadbourne, Member Gail Bartlett, Member Bob Scott, Alternate Members Jane Gibbons and Ron Kiesman, and CEO Eric Gulbrandsen. Absent: Member Annette Bouchard. Also in attendance was Jim Willey, Sweden Fire Chief.

3. Read Minutes from June 21, 2011 Meeting: The Minutes from the June 21, 2011 meeting were read by David Johnson. Gail Bartlett moved and Bob Scott seconded the acceptance of the minutes as written. The motion passed unanimously.

4. Communication & Bills

A. Correspondence Received (by date):

1. 7/8/11: rec'd in PB Mailbox, copy of letter dated 6/27/11 from CEO to Tom Austin re: Woodbury Hill subdivision and residents desire to change road name.
2. 7/16/11: rec'd in PB Mailbox, copy of letter dated 7/12/11 from Sweden Board of Selectmen to PB regarding withdrawal of previous request re: proposed Wind Energy Facility Ordinance.

B. Correspondence Sent (by date):

1. 6/27/11: letter dated 6/26/11 sent from Chairman to Shannon McManus of KJK Wireless re: US Cellular CUP for wireless tower. Letter regarded two issues: 1) an apparent typo on the High Intensity Soil Survey, where the lot is listed as "108", when the actual lot is "10-B". 2) The Board does not have any written communication from KJK Wireless authorizing Richard Trafton, Esq. to represent KJK Wireless. Minutes from the May 17, 2011 meeting were also included for KJK Wireless' records. The letter also reminded KJK that the application for the CUP has not yet been accepted as complete by the Board, and that a review by SMRPC, to be paid by KJK, would need to occur before the Board could re-review the application and determine whether it is complete.

5. CEO's Report: Eric Gulbrandsen submitted the June 2011 CEO report. Gail Bartlett moved and Laura Chadbourne seconded the acceptance of the CEO's report. The motion passed unanimously.

6. Old Business:

A. Board discussed Woodbury Hills subdivision residents' desire to change road name, and appropriate steps the residents must take. A change to the street name requires Selectman's approval but this particular situation also involves a change to an approved subdivision plan which requires approval by the Planning Board. The Board discussed two options that were both researched with MMA Legal. The Subdivision regulations require that a revised plan be submitted for review and approval and subsequent recording, which by State Statute (Title 33 MRSA section 652) must be completed by a licensed professional and must meet certain standards. This would likely be very costly for Woodbury Hills Association.

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The 1st option is to have the applicant (Woodbury Hills Association) apply for a Subdivision Amendment. The 2nd option, which is a more streamlined one for the Planning Board, and likely to cost the applicant less money, is to have the applicant pursue acknowledgement of the Planning Board for the name change once it has been approved by the Selectmen. Laura Chadbourne reviewed the step-by-step process for each option with the Board (detailed notes are attached in these Minutes in Appendices A and B). This more streamlined process (at least for the Planning Board's portion of the approval) could be used to satisfy both town ordinances and the state statutes since the location of the road is not changing and all of the lots on the original plan remain the same. It is important that the street name change be approved by both the addressing officer (Selectmen) and the Planning Board and that the change be recorded in the places and with the officials who need to know.

Gail Bartlett made a motion for the Board to vote in favor of the 2nd option. Bob Scott seconded the motion. The Board voted unanimously to recommend the 2nd option, that the applicant pursue the name change by applying first to the Board of Selectmen, then making application to the Planning Board for acknowledgement of the name change. This allows the Woodbury Hills Association to submit a document from the Planning Board to the Registry of Deeds for recording as an approved revision to the original subdivision plan. The Chairman stated he would send a letter on behalf of the Board to Mr. Tom Austin describing the options and the Board's recommended course of action.

7. New Business:

- A. Jim Willey, Sweden Fire Chief, spoke regarding potential wireless tower, currently being pursued by CUP applicant KJK Wireless for US Cellular. Jim stated that while there was no current need for the Fire Department to have any device on the wireless tower, the Fire Department would like space for future device installation, possibly a repeater. Jim will send the Board a letter outlining his request, and to confirm that he will make himself available on behalf of the Fire Department for a site walk, should the application proceed to that point.
- B. Secretary Laura Chadbourne shared with the Board information received from Western Maine Economic Development Council ("WMEDC"), related to reserving space on the potential wireless tower. WMEDC strongly advises the Planning Board to obtain assurance in writing from US Cellular that US Cellular will reserve space at the top of the wireless tower for future municipal use. WMEDC advised that the Board to make this assurance from US Cellular a condition of granting the CUP (when and if the applicant obtains the permit; as a reminder, the application is not currently complete). WMEDC stated that other towns who did not obtain assurance in writing from wireless companies for space on the tower were now unable to use the towers for municipal use, because the wireless company would not grant them space after the fact.
- C. Board's review of Town of Sweden Zoning Ordinance, beginning at Section X.X, page 35, was postponed to a future meeting.

8. Announcements:

- A. The next regular Meeting will be **Tuesday, August 16, 2011** at 7:00 PM at the Sweden Town Office.

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Dave Johnson moved and Gail Bartlett seconded that the meeting be adjourned at 8:00 PM. The motion passed unanimously.

Respectfully submitted,

Laura Chadbourne
Secretary

APPENDIX A: PROCESS FOR SUBDIVISION AMENDMENT

From the Town of Sweden, Maine Subdivision Regulations Third Revision March 12, 2009:

Article IV. – Administrative Procedure:

Section 4.3 Revisions to Approved Plans.

A. Procedure

An applicant proposing a revision to a previously approved plan shall request to be placed on the Board's agenda at least 14 days in advance of a regularly scheduled Planning Board meeting by contacting the Chairman of the Board. If the revision involves the creation of additional lots or dwelling units, the plan shall be reviewed using procedures for preliminary plan and final plan approval in the same way a new subdivision application would be reviewed. *If the revision involves only modifications of the approved plan, without the creation of additional lots or dwelling units, the plan may be reviewed using only the procedures for final plan approval, unless the Board determines that a more detailed review is appropriate.*

B. Submissions

Copies of the proposed revised plan shall be provided to the Code Enforcement Officer and to each member of the Board at least 14 days prior to a scheduled meeting of the Board. The application shall include enough information to allow the Board to make a determination that the proposed revisions meet the standards of these regulations and the criteria of the statute. The revised plan shall indicate that it is the revision of a previously approved and recorded plan and shall show the title of the subdivision and the book and page on which the original plan is recorded at the Registry of deeds.

C. Scope of Review

The Board's scope of review shall be limited to those portions of the plan which are proposed to be changed.

The Board will have to complete a **Findings of Fact** to verify that the applicant meets the following requirements:

ARTICLE VIII - FINAL PLAN FOR MAJOR SUBDIVISION

8.1 Procedure.

- A.** The applicant shall, within six months after the approval of the Preliminary Plan, file with the Board an application for approval of the Final Plan. If the application for the Final Plan is not submitted within six months after the Preliminary Plan approval, the Board may refuse without prejudice to act on the Final Plan, and require resubmission of the Preliminary Plan. The Final Plan shall reflect the layout shown on the Preliminary Plan, and address

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changes or additions as recommended by the Board during the review of the Preliminary Plan.

The applicant shall request to be placed on the Board's agenda at least 14 days in advance of a regularly-scheduled Planning Board meeting by contacting the Chairman of the Board.

Copies of the Final Plan shall be provided to the Code Enforcement Officer (CEO) and to each member of the Board at least 14 days prior to the scheduled meeting of the Board.

- B.** Prior to submittal of the Final Plan application, the following approvals shall be obtained in writing, where appropriate:
1. Maine Department of Environmental Protection, under the Site Location of Development Act, Alteration of Coastal Wetlands Act, Great Ponds Act, Alteration of Streams and Rivers Act.
 2. Maine Department of Environmental Protection under the Natural Resources Protection Act.
 3. Maine Department of Human Services, if the subdivider proposes to provide a central water supply system.
 4. Maine Department of Human Services, if a centralized or shared subsurface sewage disposal system(s) is to be utilized.

Secretary's Note: Board should review but it is probable that obtaining approvals for the above are not appropriate for this amendment.

- C.** All applications for Final Plan approval for a major subdivision shall be accompanied by a non-refundable application fee in accordance with the Town of Sweden Fee Schedule payable by check to the municipality. If a public hearing is deemed necessary by the Board, an additional fee shall be required to cover the costs of advertising and postal notification. To ensure that new development addresses and minimizes community impacts, the applicant shall be aware that any costs for review by others deemed necessary by the Board shall be borne by the applicant. Such costs may include those for independent consulting services such as:

- A planner to review the proposed subdivision layout and the subdivision standards.
- An attorney to review performance guarantees and/or other documents.
- An engineer to review plans for new roads and the management of stormwater and drainage.
- An inspector to conduct periodic inspections during infrastructure construction.
- A hydrogeologist to identify groundwater impacts.
- Fee to cover Board-incurred costs

- D.** The applicant, or his duly authorized representative, shall attend the meeting of the Board to discuss the Final Plan.

The applicant shall attend the meeting where the proposed change is to be discussed.

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- E. Within 30 days of the meeting of the Board to discuss the Final Plan, the Board shall notify the applicant in writing if the application is complete, or, if not, what additional submissions are required for a complete application. Upon determination that the Final Plan application submitted for review is complete, the Board shall issue a dated receipt to the applicant.
- F. Upon determination of the completeness of the Final Plan Application, **the Board may decide that a public hearing is necessary prior to making Findings of Fact on the application.** If the Board decides to hold a public hearing, it shall hold the hearing within 30 days (or at the next regularly-scheduled board meeting) after the issuance of a receipt for the submittal of a complete application and shall publish notice of the date, time, and place of the hearing in a newspaper of general circulation in the municipality at least two times, the date of the first publication to be at least seven days before the hearing. The notice of the hearing shall be posted in a conspicuous public place at least seven days prior to the hearing.
- G. When a proposed subdivision is located within 500 feet of a municipal boundary, and a public hearing is to be held, the Planning Board shall notify the Clerk and the Planning Board of the adjacent municipality involved, at least ten days prior to the hearing.

Secretary's Note: Subdivision is not within 500 feet of a municipal boundary so this subsection does not apply.

- H. Before the Board grants approval of the Final Plan, the applicant shall meet the performance guarantee requirements contained in Article XII.
- I. If the proposed subdivision is located in more than one municipality, the Board shall have a joint meeting with the Planning Board of the adjacent municipality to discuss the Plan.

Secretary's Note: The subdivision is not located in more than one municipality so no joint meeting is required.

- J. Within 30 days of a public hearing, or within 60 days of receipt of a complete application if no hearing is held, or within another time as may be mutually agreed to by the Board and the applicant, the Board shall make Findings of Fact on the Final Plan. Findings of fact and conclusions will be made relative to the criteria contained in Title 30-A, MRSA §4404 and in these regulations. Findings of Fact include a summary of all basic facts involved in the application and Conclusions of Law are statements linking the specific facts covered in the Findings of Fact to the criteria in the regulations including, but not limited to, Article I – Purposes. The Board shall also review Article X – General Standards and Article XI – Street and Storm Drainage Design and Construction Standards. If the Board finds that all standards of the Statute and these regulations have been met, they shall approve the Final Plan. If the Board finds that any of the standards of the Statute have not been met, the Board shall either deny the application or approve the application with conditions to ensure all of the standards will be met by the subdivision. The reasons for any conditions shall be stated in the records of the Board.

Section 8.3 Final Approval and Filing states: “Upon findings of fact and determination that all criteria in Title 30-A, MRSA §4404 and these regulations have been met, and upon voting to approve the subdivision, the Board shall sign the

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Final Plan. One copy of the signed Plan shall be retained by the Board as part of its permanent records. One original mylar and one copy of the signed Plan shall be forwarded to the Selectmen. The mylar shall be retained in the Town's permanent records (the vault) and the copy is to be filed with the Tax Assessor. One copy of the signed Plan shall be forwarded to the CEO.

One original mylar and one copy are to be filed at the Registry of Deeds. The applicant shall forward a copy of the recording receipt to the Planning Board to be filed with the permanent record. Any subdivision not recorded in the Registry of Deeds within 90 days of the date on which the Plan is approved and signed by the Board shall become null and void.”

APPENDIX B: ALTERNATE PROCESS

Background/Situation: it appears that there are two Ordinances that apply to the proposed street name change in a subdivision. The first is the Town of Sweden Street Naming and Numbering Ordinance and the second is the Subdivision Regulations, since the proposed change is to a street in a previously approved subdivision.

Lengthy discussions around this issue were conducted with the Maine Municipal Association (MMA) Legal department, the Sweden E-911 Coordinator, the Registry of Deeds and the First Selectman of Sweden.

MMA Legal agrees that it is not completely clear under the town's subdivision regulations or the State subdivision law whether a change in the name of a private road on an approved subdivision plan is required. The time and cost seem excessive, given the nature and significance of the change that is being proposed. The Subdivision regulations require a plan to be submitted for review and approval and subsequent recording; which by State Statute (Title 33 MRSA section 652) must be completed by a licensed professional and must meet certain standards. This would likely be very costly to the applicant. A change to the street name will require Selectman's approval but it is also involves a change to an approved subdivision plan which requires acknowledgement by the Planning Board to be recorded at the registry.

After these discussions, a more streamlined process (at least for the Planning Board portion of the approval) was proposed by MMA Legal to satisfy both town ordinances and the statutes since the location of the road isn't changing and all of the lots on the original plan remain the same. It is important that the street name change be approved by the addressing officer (Selectmen) and the Planning Board, and that the change be recorded in the places and with the officials who need to know.

The following process would ultimately satisfy both the Town's Subdivision Ordinance and the Town of Sweden Street Naming and Numbering Ordinance to the best of the Board's knowledge:

- The Woodbury Hills Association should file an application with the Selectmen for the name change. It should be sent directly to the E-911 Coordinator (Ron Kiesman at 116 Wint Rd. Sweden, ME 04040) as the Selectmen's designee.
- The application will require Meeting Minutes from an Association meeting where a majority of lot owners voted to pursue the name change, or a letter signed by a

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majority of the members of the Woodbury Hills Association in order to prove “standing to apply”.

- The request should be made to change the name of the street currently known as Gerry Circle to Mountain View Circle as recorded in Plan Book 17, Page 94 at the Oxford Western District Registry of Deeds (please verify details).
- The E-911 coordinator must then make findings regarding the proposed new street name and prepare a written decision that the proposed name meets the requirements of the Town of Sweden Street Naming and Numbering Ordinance. This decision is then forwarded to the Selectmen for approval.
- The Selectmen then must vote to approve or deny the application and forward a letter of their decision to the Woodbury Hills Association.
- Assuming that the application is approved, the Woodbury Hills Association (the “applicant”) should then make a written request to the Planning Board. They should state that they want to request that the Planning Board officially acknowledge the street name change of the street known as Gerry Circle to Mountain View Circle as recorded in Plan Book 17, Page 94 at the Oxford Western District Registry of Deeds, which is reflected in the attached letter of the Selectmen’s decision (be sure to attach the letter of the Selectmen’s decision).
- The Planning Board must officially acknowledge the change so the Woodbury Hills Association can submit it to the Registry of Deeds for recording as a revision to the original subdivision plan.
- There will be a \$50 fee made payable to the Town of Sweden, Maine and forwarded with the application to the Sweden Planning Board to cover the postage, copying, changes to tax documents, etc. that will be involved. If actual expenses exceed \$50, the Woodbury Hills Association will be responsible for any additional expenses.
- To avoid going through the entire Subdivision Amendment review process, the Planning Board can then vote to acknowledge for the record that the addressing officers have officially changed the name of the street to Mountain View Circle which was formerly named Gerry Circle as depicted on an approved plan for the Woodbury Hills Subdivision which is recorded in Plan Book 17 Page 94 at the Oxford Western District Registry of Deeds.
- The Planning Board vote can then be typed up in the form of a certificate indicating the date on which a majority of the Board voted to approve the revision and describing the revision, signed by the Board Secretary in the presence of a notary public for recording purposes.
- This will then be sent to the Woodbury Hills Association so they can take it to the Registry of deeds for recording. The Board will require that the Woodbury Hills Association record the document at the Registry of Deeds and that the Association obtain marginal notations within each subdivision deed to which this change applies, which will also need to be completed at the Registry of Deeds. These Registry of Deeds activities must occur within 90 days of the certificate issuance, and the Association must request that the Registry send recorded and attested copies of the document and deed changes back to the Tax Collector at the Town Office at 147 Bridgton Rd. Sweden, ME 0404 and an additional copy to the Planning Board Secretary at 406 Lovell Rd. Sweden, ME 04040, or the Planning Board decision will become null and void.
- Since the registry will record the change as a document, this would allow the applicant to get the necessary approval from the Selectmen and the necessary

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approval from the Planning Board without going to the expense of getting a new stamped drawing.

After the Planning Board receives the copy of the receipt for the recording of the name change and copies of the notated deeds, they will then send a copy of their letter of decision to:

- E-911 coordinator
 - Selectmen
 - CEO
 - Town Assessor
 - Tax Collector
 - Town Clerk
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- The E-911 Coordinator then completes the proper form to be sent to Augusta so all appropriate emergency service providers are notified.
 - The Planning Board may make a note on the approved subdivision plan in the flat file with the date of approval and the name change, or find another way to document the change.
 - The Woodbury Hills Association will be responsible for installing a new private road sign in accordance with Section X. Performance Standards Subsection S.4. Road Signs of the Sweden Zoning and Land Use Ordinance Seventh Revision March 21, 2009.

References:

Zoning and land Use Ordinance, Subdivision Regulations and the Street naming Ordinance can all be viewed at <http://www.eskerridge.com/Sweden.htm>.

The State Statute regarding plan Requirements for a plan recorded at the registry can be found at <http://www.mainelegislature.org/legis/statutes/33/title33sec652.html>.