

Minutes and Exhibits December 6, 2023, Lovell Planning Board Meeting

Call to Order 6:35 PM

Andrew: Call to Order.

Attendance

Andrew:

- PB Members present: Andrew Brosnan (Andrew), Dave Durrenberger (Dave), Eugene Jordan (Heinrich Wurm (Heinrich))
- Also present: Applicants, John Chagnon (John, Engineer for Applicant), Rob Drew (Rob, Applicant), Chris Brink, Jill Rundle

Review, Accept / Correct Minutes

October 4, 2023, Minutes vote to approve = Unanimous

November 1, 2023, Minutes vote to approve = Unanimous

November 15, 2023, Site walk vote to approve = Unanimous

Lovell Store Application

Andrew: I contacted Maine DEP about soil survey and hydrogeologic assessments, they just got back to me, I will forward DEP the Waiver explanation from John Chagnon, and wait for a response.

John: Presented traffic assessment and an Ambit letter with information about why Applicant wants a waiver for High Intensity Soil Survey (HISS) and Hydro-Geological Assessment, presenting detailed information tonight. Read through his results. Claimed runoff water, if polluted, would not travel as quickly through the sites' silty soil. But there is no conclusion in his presentation, it only went as far as to say the letter was "sufficient to provide information". John read 12/6/23 Ambit letter.

Heinrich: I think we should have an independent engineer as there is concern around town, about the water aquifer and Alder brook.

Andrew: Traffic impact is submitted, fee is paid, vote to call its submission complete = Unanimous

Andrew: Days and hours of operation vote to call its submission complete = Unanimous

Andrew: Wildlife habitat?

John: We got an initial screening, but PB wants a specific letter and we have not gotten that yet.

Andrew: I asked for some guidance on granting waiver(s). I got an e-mail back from John Hopeck. He points out that the information provided would not be acceptable to the DEP. He also had questions about the Hydro-Geologic assessment. We would like to have an expert tell us that the information provided is adequate. Development is slightly below the footprint that would require a storm water permit, so any expansion, keep that in mind. This leaves the two waiver requests, before the application can be complete. A public hearing, I understand, is not required, there is a trigger. If the board thinks there is an impact, because of traffic and other factors. I have not heard any significant objection from the abutters, traffic is reviewed by the state.

Dave: This has more presence than the warehouse, and self-storage and they had public hearings.

Heinrich: I think because of the environmental impact it warrants a hearing.

Eugene: I think when the application is complete, we voted for a public hearing or not then. If we do not do a public hearing, I think the public could be like "why didn't I hear about this" type of thing.

Andrew: If everyone felt strongly that we needed a public hearing, we could schedule it for January.

Eugene: There is a concern of people not knowing what is going on.

Heinrich: If time is important the applicant could go ahead with the two studies.

Andrew: We should have a complete application before we decide if we want a public hearing.

Dave: Can we hire a professional by going out to bid for a study?

Submitted by Dave Durrenberger

Note: These minutes are a best effort written record of all actions taken, and all topics discussed by the Board, applicants and public presenting testimony, and the substance of that testimony. The verbatim dialogue for any topics listed in these minutes can be obtained from the audio recording of the meeting, available from the Lovell Town Office.

Minutes and Exhibits December 6, 2023, Lovell Planning Board Meeting

Andrew: The applicant could hire an expert to get the data then the town could have someone review it.

Eugene: Would that be a Condition, in that after the data is provided, we could have an expert.

Dave: I think the analysis should be done by a neutral person, we had shoreland applicants, cutting a driveway in the buffer using concrete pavers, and their expert engineer said it does not count for lot coverage, but it does / it did, Maine DEP rejected the concrete pavers years ago. Paid consultants engineers, attorneys are working for the applicants.

Heinrich: Town may request assistance, says it in our ordinance.

Andrew: I will send the information to the DEP and get their opinion.

John: Site soils are tight, so water will not migrate to the aquifer, the soils are tight.

Heinrich: Is the speed limit going to remain fifty at that location?

Andrew: I feel like the state is the authority in that department, but the other two issues we are left to deal with.

Dave: How much does a Hydro-Geological Assessment cost? \$5,000, \$10,000?

John: The Applicant concern is they would be front loading the cost before they get the tank approved.

John: The State will ask questions regarding the underground tanks, and the state will issue the tank permit.

Rob: State of Maine will require what they need, and these tests would be premature.

Chris: The concern is the runoff at a fuel station to the aquifer.

Specific Performance Standards

Andrew: A standards committee could be formed, to produce things.

Andrews: We picked the top 5 Land Uses, but we need to get written what the SPS should address. We cannot go out to bid, because the vendor will ask what do you want to address in the SPS? I will send an e-mail to the PB in the next few days to identify what they want to address. I want more feedback; I do not want to just do it.

Old Business Conditional Use Application – None

CEO Report – No report presented.

Public Hearing – None

• Meeting Adjourned: 7:48 PM

- Date and Time of Next Meeting Wednesday January 3, 2024, 6:30 PM

Additional Exhibits

Submitted by Dave Durrenberger

Note: These minutes are a best effort written record of all actions taken, and all topics discussed by the Board, applicants and public presenting testimony, and the substance of that testimony. The verbatim dialogue for any topics listed in these minutes can be obtained from the audio recording of the meeting, available from the Lovell Town Office.

d.durrenberger@lovellmaine.org

From: Andrew Brosnan <a.brosnan@lovellmaine.org>
Sent: Friday, December 22, 2023 11:53 AM
To: Diane Caracciolo; Dave Durrenberger; Eugene Jordan; Mike Lewis; Rose Micklon; Heinrich Wurm
Cc: Alan Broyer; rob@drewcorpme.com
Subject: Fwd: Lovell Planning Board seeking guidance

Hello All,

I forwarded the DEP the new/additional information provided by the applicant at the 12/06/23 pb meeting re test pit data.

Please see email received yesterday from the DEP.

Regards,
Andrew

Begin forwarded message:

From: "Breau, Susan" <Susan.Breau@maine.gov>
Subject: RE: Lovell Planning Board seeking guidance
Date: December 21, 2023 at 11:57:15 AM EST
To: "Hopeck, John T" <John.T.Hopeck@maine.gov>, "Sirois, Alison" <Alison.Sirois@maine.gov>, "Noble, William T" <William.T.Noble@maine.gov>
Cc: Andrew Brosnan <a.brosnan@lovellmaine.org>, "Tufts, Kate" <Kate.Tufts@maine.gov>

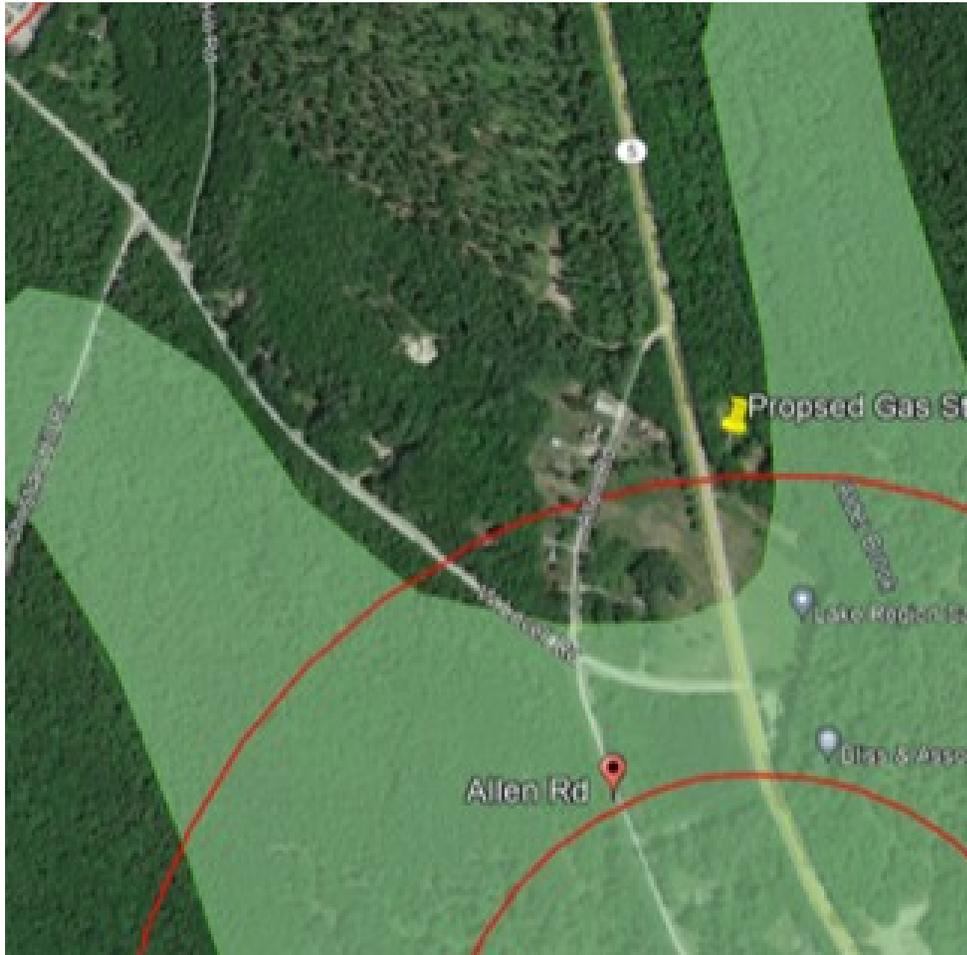
Thank you for passing this along, John.

Hello, Mr. Brosnan.

Thanks for checking in on this. As John Hopeck noted, an onsite drinking water well would likely meet DHHS criteria for a public drinking water supply. The Drinking Water Program (DWP) Inspector will work with the applicant on the New Well Approval process. The DWP would make a determination at that point as to whether or not a hydrogeologic assessment would be needed for drinking water source protection purposes based on the setback of the gas station UST and septic system from the well.

We did a quick desk recon of the site area, and believe the proposed facility would fall in the vicinity of the yellow pushpin below. We don't anticipate impacts to any existing public water systems from the proposed development. The light green shaded area is underlain by a moderate-yield sand and gravel aquifer. Sand and gravel aquifers are prime locations for future community public water systems, should the need arise for one in Lovell. Care should be taken to not contaminate surface and groundwaters of the State, with particular attention to the areas underlain by sand and gravel aquifers.

Feel free to reach out with any further questions.
Susan



Susan F. Breau, LG
Hydrogeologist, Water Resources Team Leader
Maine DHHS CDC Drinking Water Program
207.592.6981

From: Hopeck, John T <John.T.Hopeck@maine.gov>
Sent: Wednesday, December 6, 2023 3:19 PM
To: Sirois, Alison <Alison.Sirois@maine.gov>; Noble, William T <William.T.Noble@maine.gov>
Cc: Breau, Susan <Susan.Breau@maine.gov>; Andrew Brosnan <a.brosnan@lovelmaine.org>
Subject: RE: Lovell Planning Board seeking guidance

Bill, this is based on a request from the town of Lovell (see below) to clarify soil mapping and other requirements based on their ordinance and a request from a developer to waive the mapping and hydrogeologic assessment requirements; feel free to add anything you think appropriate. Susan, I'm copying you on this because of possible PWS issues.

Hi Alison. Regarding the appropriate soil survey class, it is important to look at the scale and overall footprint of the proposed development compared to the level of detail of the mapping, Class A being the most detailed and Class D (essentially what is proposed by the applicant in this case) the least detailed. The detail is reflected in the size of the map units and the dissimilar inclusions (oversimplifying, soils with different limiting characteristics) allowed in each map unit. According to the MAPSS mapping standards (<http://www.mapss.org/pdf/guidelines1.pdf>), p.4 ff. in the numbered pages of the text, p 8 ff. in the pdf pages):

Class A (High Intensity) 1. Map units will not contain dissimilar limiting individual inclusions larger than one-eighth acre. Dissimilar limiting inclusions may total more than one-eighth acre per map unit delineation, in the aggregate, if not contiguous. 2. Scale is 1 inch equals 100 feet or larger (e.g. 1" = 50').

Class D (Medium Intensity) 1. Map units may contain dissimilar limiting individual inclusions larger than 5 acres provided that each dissimilar limiting inclusion is smaller than the minimum map unit size utilized. Dissimilar inclusions within a map unit may total more than the minimum map unit size, in the aggregate, if not contiguous. 2. Scale of 1 inch equals 2,000 feet or larger (e.g. 1" = 1320').

Note that the footprint of the proposed development is less than one acre, and the proposed map scale allows dissimilar inclusions of "larger than five acres"; the proposed soil survey would not, therefore, be considered adequate by the Department given the potential that the entire footprint could be within an area of dissimilar limiting soils. Note that MAPSS Class B soil surveys (the second highest level of detail) allow dissimilar limiting inclusions of up to one acre, so that this level of survey would also be considered inadequate. Department standards do allow geotechnical or other explorations to substitute for soil surveys in certain cases, but the application does not indicate that any subsurface exploration has been performed at the site, other than for the wastewater disposal system, so it is not possible to determine if this substitution could be made in the present case. The only site-specific information relevant to soils at this site is found in the HHE-200 form, which shows two test pits in the area of the proposed disposal bed, although the logs for these explorations are not included in the form. The soil information on page 1 of the HE-200 form reports profile 8 with condition C, and a depth of fifteen inches to the most limiting soil factor. In the absence of the complete test pit data, it is not known if this is a restrictive layer, depth to seasonal high groundwater, or both. Table 4D of the Subsurface Wastewater Disposal Rules describes Profile 8 soils as derived from lacustrine deposits and having "loam to fine sandy loam upper horizon(s) overlying firm silt loam to silt textured lower horizons...lower horizons tend to be firm and massive in structure and are considered to be hydraulically restrictive"; the soil map provided shows the area of the proposed development as Croghan soils derived from outwash delta sediment (These would commonly be soil profile 5 or 6 in Table 4D.), with fine sand or sand to a depth of at least 60 inches. Consequently, the only soils information provided that is specific to the site is inconsistent with the soil map provided with the application, and complete logs of the onsite explorations are not provided to evaluate onsite soil conditions in any detail. This is particularly concerning since the applicant is proposing an unlined stormwater basin, which the Department would treat as an infiltration basin, discussed further below.

What is required for a hydrogeologic assessment will vary depending on the type of development, but generally it is a requirement that a Maine Licensed Geologist assess the impact of the proposed development on groundwater and surface water quality and/or quantity, and potential impacts to groundwater-dependent natural resources and other existing uses of the groundwater in the project vicinity, if any. In this case, the possible triggers could be the presence of the onsite wastewater disposal system and well, and the stormwater infiltration basin. My understanding from Mr. Brosnan is that the town requires nitrate-impact assessments only for subdivisions and not for this sort of development. Although the stormwater basin is referred to as a detention pond, the project details (See Detention Pond Detail, plan sheet D3) do not show an impermeable liner for the pond, and the basin will therefore, if the soils and depth to groundwater will allow (and, as noted above, no site-specific evidence to that effect has been presented) allow infiltration of stormwater below the storage volume shown in the referenced detail. Given the proposed uses for the site, it is likely that the well will meet DHHS criteria for a public water supply, and it is questionable that a discharge to groundwater within fifty feet of this well from a basin receiving runoff from a refueling area and a dumpster pad would be acceptable to DHHS. It is also a question for the town whether infiltration of runoff from these sources

should be allowed in proximity to the aquifer protection zone. The Department would not allow a discharge to groundwater from these sources in this proximity to a source of drinking water, and typically requires a 300-foot setback between infiltration systems and private water supplies. If the basin or well is relocated to increase the distance between them, the Department would require a hydrogeologic assessment by a Maine Licensed Geologist to demonstrate that the infiltration basin would not be within the contributing area for the public water supply well. If the soil types are as shown in the Class D map, the basin will certainly be an infiltration basin; even the finer soils indicated by the HHE-200 form could have use for infiltration, depending on the actual depth and nature of the limiting factor. The Department would require at least one soil exploration in this area, logged by a Maine Certified Soil Scientist, to a depth well below the base of the proposed infiltration area in , and would very likely require a hydrogeological assessment to determine the rates of formation and dissipation of a groundwater mound underneath the infiltration area, to determine whether or not that mounding would interfere with drainage of the basin in the required time or other factors relevant to proper operation of the stormwater system. Note that since, as designed, this will function as an infiltration basin, the applicant will also need to demonstrate that it will meet all setbacks from onsite and offsite wastewater disposal systems required in Table 7B of the Subsurface Wastewater Disposal Rules.

The development as designed is slightly below the footprint at which a Stormwater Permit would be required from the Department. The applicant should note that any expansion of the development to trigger this requirement would likely require substantial retrofitting of the development as proposed in this application, including installation of groundwater monitoring in the area of the infiltration basin.

From: Sirois, Alison <Alison.Sirois@maine.gov>
Sent: Friday, December 1, 2023 10:51 AM
To: Andrew Brosnan <a.brosnan@lovellmaine.org>; Hopeck, John T <John.T.Hopeck@maine.gov>
Cc: Hallowell, Dawn <Dawn.Hallowell@maine.gov>
Subject: RE: Lovell Planning Board seeking guidance

Hi Andrew,

The Department will require this information for certain projects that trigger Site Location of Development Act permitting i.e. projects that propose > 3 acres of impervious area or residential subdivisions with 15 or more lots on over 30 or more acres. However smaller projects are not subject to these same requirements. I am forwarding your request onto our senior hydrogeologist who can give you more technical guidance on why these may be required and when.



Alison Sirois (she/her)
Regional Manager, Bureau of Land Resources
Maine Department of Environmental Protection
Phone (207)699-7028 Office (207)822-6300
www.maine.gov/dep

From: Andrew Brosnan <a.brosnan@lovellmaine.org>
Sent: Friday, December 01, 2023 8:36 AM
To: Sirois, Alison <Alison.Sirois@maine.gov>; Hallowell, Dawn <Dawn.Hallowell@maine.gov>
Subject: Re: Lovell Planning Board seeking guidance

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Alison and Dawn,

Could you let me know if you can assist with this or if there is a better contact at DEP?

Thans,
Andrew

On Nov 27, 2023, at 8:58 AM, Andrew Brosnan <a.brosnan@lovellmaine.org> wrote:

Hello Alison and Dawn,

Could you please take a look at the email below and let me know if you can provide assistance to the Lovell planning board on the matter?

Thank you,
Andrew Brosnan
Lovell Planning Board, Chairperson

Begin forwarded message:

From: "Kavanah, Brian W" <Brian.W.Kavanah@maine.gov>
Subject: **RE: Lovell Planning Board seeking guidance**
Date: November 20, 2023 at 10:43:44 AM EST
To: Andrew Brosnan <a.brosnan@lovellmaine.org>
Cc: "Sirois, Alison" <Alison.Sirois@maine.gov>, "Hallowell, Dawn" <Dawn.Hallowell@maine.gov>
X-Spam-Status: No, score=-0.7

Hello Andrew,

Your questions are best directed to staff in our Bureau of Land Resources that regulate new developments.

I've copied Alison Sirois (Licensing and Compliance Manager in the DEP Portland Office) and Dawn Hallowell (Director of Licensing) in the DEP Augusta Office. I expect one of them could help you.

Thanks.

Brian Kavanah
Director, Bureau of Water Quality
[Maine Department of Environmental Protection](#)

Station 17, Augusta, ME 04333
(207) 530-0293
brian.w.kavanah@maine.gov

From: Andrew Brosnan <a.brosnan@lovelmaine.org>
Sent: Monday, November 20, 2023 8:33 AM
To: Kavanah, Brian W <Brian.W.Kavanah@maine.gov>
Subject: Lovell Planning Board seeking guidance

Hello Brian,

I am chair of the Planning Board in the Town of Lovell. (<https://www.lovelmaine.org/planning-board>) I'm hoping you can point me to the appropriate person or resource at the DEP regarding some questions that the planning board has. The questions regard a 'high intensity soil survey' and a 'hydrogeologic assessment' that are generally required by Lovell town ordinance for new construction.

The board is currently reviewing a conditional use permit application, and the applicant has requested waivers for both of the above requirements. Since the planning board is made up of lay people, we are seeking assistance and guidance to better understand the need for these requirements, and the underlying questions and concerns they are intended to address, in order to determine if the waivers can be granted. Could you please let me know if the DEP can assist the Lovell Planning Board in this matter, and if so, provide the appropriate contact information? I have included some additional details and links below.

Best Regards,
Andrew Brosnan
Chair - Lovell Planning Board
#####

Additional Information

Summary

The Lovell Planning board is currently reviewing a Conditional Use permit application for a Convenience Store, Restaurant and Gas Pumps. The applicant has requested waivers from the Planning Board for requirements of a 'high intensity soil survey' and a 'hydrogeologic assessment'. As the plan set linked below shows, the five acre lot includes an Aquifer Protection Overlay district, wetlands, a Special Flood Hazard Area - Zone A, and borders Alder Brook. However, the roughly one acre proposed development area does not directly overlay any of these elements. The planning board is seeking guidance regarding these matters as it considers the applicant's waiver requests.

Links to Conditional Use Permit Application under review, including plan set:

<https://www.lovelmaine.org/planning-board/events/16581>

Town of Lovell Zoning Ordinance:

<https://www.lovellmaine.org/planning-board/files/lovell-zoning-ordinances-2023-updates>

Excerpts from Ordinance - Article 9.9 - Conditional Use Permits:

9.9.D - Additional Application Submittals

Where new construction or expansion of a use is proposed, submission of each of the following additional items shall be required as part of the application. However, if the Board finds that strict compliance with this subsection would be excessive in light of the nature of the proposed structure or activity, or where there are special circumstances of a particular plan, the Board may waive any of these following application submissions, upon written request of the applicant, provided that such waivers will not nullify the intent and purpose of the Zoning Ordinance.

9.9.D.5 - For undeveloped sites, a high intensity soil survey by a Certified Soil Scientist of those areas of the site proposed to be developed.

9.9.D.9 - A hydrogeologic assessment prepared by a Certified Geologist or Registered Professional Engineer, experienced in hydrogeology, where site considerations or development design indicate greater potential of adverse impacts on ground water quality. Such considerations may include, but shall not be limited to, extensive areas of shallow to bedrock soils, or the proposed use of shared or common subsurface waste water disposal systems.

####