

Minutes and Exhibits January 3, 2024, Lovell Planning Board Meeting

Call to Order 6:30 PM

Andrew: Call to Order.

Attendance

Andrew:

- PB Members present: Andrew Brosnan (Andrew), Dave Durrenberger (Dave), Mike Lewis (Mike)
- CEO Allen Broyer
- Also present: John Chagnon (Engineer for Applicant), Rob Drew (Applicant), Crystal Drew (Applicant), Chris Brink, Jill Rundle, Stan Tupaj

Andrew: Diane Conary resigned from Planning Board Mike Lewis is now a Full Member

Review, Accept / Correct Minutes

December 6, 2023, Minutes vote to approve = Unanimous

Ordinance to Fix Definition of an Acre

Andrew noted the PB voted to hold a public hearing for the amendment to fix the typo in the definition of an acre which currently exists in our ordinance. The correction would make the following general change; An area of land measuring ~~42,650~~ 43,560 square feet. Vote = Unanimous. The Public Hearing will be February 7th.

Lovell Store Application – Rob Drew, Crystal Drew (Applicants)

Andrew noted MDIFW wants a survey for Vernal Pool. There currently is no survey documented in the application per John. A DEP letter states there needs to be a survey. Discussion concluded there needs to be a Vernal Pool Survey for this application site.

There was a discussion about Hydrogeologic Survey and High Intensity Soil Survey. Dave noted we should not delay Hydrogeologic Survey or High Intensity Soil Survey for down the road. There was discussion about DEP e-mail and relevance of these tests. The Applicant noted they have a DEP storm water permit. Andrew noted planning board members want an engineer to look over the project. Andrew was in favor of hiring an engineer consultant to tell us if we have the needed data and if we need to perform the tests. Dave noted we needed the tests, we have fuel and aquifer involved, why skip the tests. Mike noted the DEP knows more about the tests than the planning board. The Applicant suggested no projects in Town have used these tests, and that at DEP, someone will tell you something and someone else will tell you something different. Chris Brink commented that in making the investment, it should be important to get the tests done, it is a relatively minor investment that would benefit the project, the applicant should want to know, the water table is 18 inches below the surface. John felt the relevance of the tests would develop as things progressed. The Applicant was concerned about passing time, members of PB were concerned that the Applicant delay of the tests was causing time to pass. There was a suggested motion to perform the tests and there was a suggested motion to hire a consultant to review the application and advise of needed tests, followed by discussion. Stan Tupaj inquired if there was a way to use the DEP, to perform the tests. Dave motioned to reject the waiver requests and make the Hydrogeologic Survey and High Intensity Soil Survey requirements for the Application and hire an engineering consultant to advise us on the results for this project; Vote = Unanimous.

Submitted by Dave Durrenberger

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Horseshoe Pond Subdivision – Rob Drew, Crystal Drew (Applicants)

Andrew inquired of Applicant, why an attorney asked them to come to the PB? The Applicant expressed it was hard to know if PB review was a requirement. The Applicant advised he had 3 lots and wanted to split 1 lot off of another lot and keep splitting off a lot every 5 years until they have 10 lots and not doing it all at once. There was discussion about whether the old sub-division was valid and the validity of the deed restrictions. Andrew will send the information to the Attorney for review and the discussion will resume at next month's meeting.

Specific Performance Standards (SPS)

Andrew advised he finished consolidating the submissions he received from PB members regarding their SPS priorities for the top 5 priority land uses.

Old Business Conditional Use Application – None

CEO Report – No report presented.

Public Hearing – None

- **Meeting Adjourned: 8:24 PM**
 - Date and Time of Next Meeting Wednesday February 7, 2024, 6:30 PM

Additional Exhibits (see below)

From: Jill Rundle <jill.rundle@gmail.com>

Subject: Notes regarding current application under consideration

Date: January 3, 2024 at 12:08:39 PM EST

To: Andrew Brosnan <a.brosnan@lovellmaine.org>

X-Spam-Status: No, score=-0.2

The natural assets of our community are an important underlying value for our special rural location and must be protected for the future.

Some thoughts for the application under consideration:

- The mapping of underground aquifers and surface water included on the application is an approximation, it's not precise. The maps contain a note that says they are a generalization and more precise study should be undertaken for land use considerations. In the applicant's plan, the distance to the approximate location of the underground aquifer is small. If the actual location is closer than suggested, or affected by increased rain events, the threat of contamination in the event of a petroleum spill could be large. It is sensible to do a confirming study to be certain of the exact location before an application is approved rather than after. Additional environmental protections around tanks or other features could be needed.

Submitted by Dave Durrenberger

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- The engineer noted that there is already a significant risk to the Alder Brook posed by the location of the transfer station and the materials and chemicals that are stored there. This should not be an argument for shortcutting environmental considerations. (In fact, the transfer station risk is such that relocation, or mitigation, of those facilities, as well as cleanup of the old dump site along the Kezar River should be considered in the future.) Addition of a storage site for petroleum in the same water system only compounds the risk already posed.
- Alder Brook is in the headwaters of the Saco River. Any threat to water quality is not only to the local wells, but also for the numerous communities downstream that rely on the Saco River for drinking water. Diligence in planning and protection is critical throughout the system.
- The extreme and multi-season flooding in the past year demonstrates that flood risk assumptions based on data that was generated decades in the past do not represent current risk or the likely increase of flood risk in the future. Extreme weather and precipitation should be anticipated in site design. The retention pond is undersized for these increasing weather events.

A WAIVER of the requirement for geo and hydraulic studies has been requested based on the applicant's representation that a study will be done before construction begins. With a permit in hand, however, there is no incentive to do a detailed study of aquifer location and groundwater levels, to modify the design to limit the risk to drinking water over a larger geography, or to consider recent weather and storm events and the potential for more significant future impacts.

For a permit to be granted for the facility, a complete study of the site and thorough engineering safeguards should be undertaken in advance with the goal of safeguarding the aquifer and the surface water systems.

Thank you

JR

From: paultdenis@gmail.com <paultdenis@gmail.com>

Sent: Wednesday, January 3, 2024 11:51 AM

To: Andrew Brosnan <a.brosnan@lovellmaine.org>

Cc: Heinrich Wurm <hwurm@lovellmaine.org>; Dave Durrenberger <d.durrenberger@lovellmaine.org>; Eugene Jordan <eugene@jordancustomcarpentry.com>; Diane Caracciolo <d.caracciolo@lovellmaine.org>; 'Mike Lewis' <m.lewis@lovellmaine.org>; Rose Micklon <r.micklon@lovellmaine.org>

Subject: Independent Engineer for CU 2023-90

Andrew:

I write to recommend that the Planning Board adopt Heinrich Wurm's suggestion (endorsed by Dave Durrenberger) that the PB retain an independent engineering firm/expert to assist the PB in review of Conditional Use Application 2023-90.

I watched/listened to the last Planning Board Meeting via Goto Meeting so I may not have heard everything correctly. I thought I heard Heinrich and Dave suggest an independent engineer. While the question was not put to a vote, I thought your view was that it was sufficient to consult with Maine

Submitted by Dave Durrenberger

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DEP. For the reasons noted below, I think an independent engineer could provide valuable advice that Maine DEP will unlikely be able to provide.

Two important issues before the PB in dealing with CU 2023-90 are (1) whether the proposed use creates undue risks to the aquifer and to the Kezar River watershed given the proximity of the proposed structure to aquifer and Alder Brook and (2) if so, whether those risks can be mitigated through the imposition of conditions on approval of the use. An independent engineer could help on both of these issues.

We have heard from the applicant that different aspects of the proposed structure (tanks, culverts, detention ponds, and the like) conform or are built to certain standards. I don't know the details on how all these standards work, and suspect that the PB does not either. These standards often are based on probabilistic assessments of the potential for failure under certain conditions. For example, the probability that a tank fails when subjected to a specified level of pressure might have to be below X%. Culverts and detention ponds might need to be of a capacity sufficient to withstand rainfall of X inches in Y hours or storms that occur with a Z% probability. None of these structures can be expected to have no risk of failure. But to address the issue set out above, the PB needs to have some way of assessing the magnitude of the risks that the applicant proposes the town take in approving the proposed use. An independent engineer could assist in understanding those risks.

Whether risks to the aquifer and to Alder Brook are acceptable or undue is necessarily a site-specific determination. The grade and composition of the soil likely has something to do with whether possible failure of any of the proposed structures puts the aquifer or Alder Brook at risk. An independent engineer could help the PB determine what test of the soil should be done and also help the PB interpret the results of those tests.

Perhaps the most valuable role for an independent engineer is helping the PB ask the right questions of the applicant that will elicit the information needed to properly assess the risks of the proposed project. Given that the PB is comprised entirely of lay members (not engineers or scientists), it is not reasonable to expect that on your own you will be able to always ask the right questions, much less answer them.

Once the right questions are asked and answered, an independent engineer can also assist in formulating conditions that could be imposed as part of approval of the proposed use. Those conditions might take the form of requiring tanks meet higher standards than proposed by the applicant or that culverts and detention ponds be of larger capacity. Conditions could also address other issues identified in response to questions asked by the independent engineer.

None of this is to suggest that there is anything wrong with the application or the recommendations of the applicant's engineers. But there is no getting around that the application and the recommendations of the applicant's engineer reflect their view of the level of risk to the waters that the town should be willing to take in approving the application. The Town, as represented by the PB, may have a different view of the risks we should be willing to take. Sorting out that risk assessment and crafting sensible conditions to mitigate any undue risk are both sufficiently technical and complex that the PB should utilize its powers under Zoning Ordinance Section 9.9.I and 9.10 to hire an independent engineer.

PTD

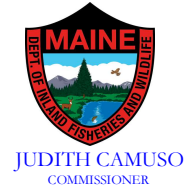
Paul T. Denis

Submitted by Dave Durrenberger

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STATE OF MAINE
DEPARTMENT OF
INLAND FISHERIES & WILDLIFE
353 WATER STREET
41 STATE HOUSE STATION
AUGUSTA ME 04333-0041



December 22, 2023

Samuel Hayden
Haley Ward
120 Main St., Suite 132
Saco, ME 04072

RE: Information Request – Route 5, Lovell Project (ERID 7230)

Dear Samuel:

Per your request received on October 31, 2023, we have reviewed current Maine Department of Inland Fisheries and Wildlife (MDIFW) information for known locations of Endangered, Threatened, and Special Concern species; designated Essential and Significant Wildlife Habitats; and inland fisheries habitat concerns within the vicinity of the *Route 5, Lovell* project. Please note that our comments should be considered preliminary.

Our Department has not mapped any Essential Habitats that would be directly affected by your project. Essential Habitats are areas formally designated as essential to the conservation of a State Endangered or Threatened species and are protected pursuant to the Maine Endangered Species Act (MESA, 12 M.R.S. §12804.2). Currently, Essential Habitats are only designated for three State Endangered coastal breeding bird species.

Endangered, Threatened, and Special Concern Species

Bat Species – Of the eight species of bats that occur in Maine, four species are afforded protection under Maine’s Endangered Species Act (MESA, 12 M.R.S §12801 et. seq.): little brown bat (State Endangered), northern long-eared bat (State Endangered), eastern small-footed bat (State Threatened), and tri-colored bat (State Threatened). The four remaining bat species are designated as Species of Special Concern: big brown bat, red bat, hoary bat, and silver-haired bat. While a comprehensive statewide inventory for bats has not been completed, based on historical evidence, it is likely that several of these species occur within the project area during spring/fall migration, the summer breeding season, and/or for overwintering. The Maine Endangered Species Act prohibits activities that may cause “Take” (kill or cause death), “harassment” (create injury or significantly disrupt normal behavior patterns), and other adverse actions to State Endangered and Threatened species. However, our Agency does not anticipate significant impacts to any of the bat species as a result of this project.

Significant Wildlife Habitat

Significant Vernal Pools – Significant Vernal Pools (SVPs) are Significant Wildlife Habitats under Maine’s Natural Resources Protection Act. MDIFW’s resource maps do not currently document SVPs on the project parcel. However, a comprehensive statewide inventory for SVPs has not been completed. SVPs are not included on MDIFW maps until project areas have been surveyed using approved methods and the survey results confirmed. Thus, their absence from resource maps is not necessarily indicative of an absence on the ground. It is unclear if surveys for SVPs have been conducted; if not, MDIFW

recommends that surveys for vernal pools be conducted within the project boundary by qualified wetland scientists prior to final project design to determine whether there are SVPs present in the area. These surveys should extend up to 250 feet beyond the anticipated project footprint because of potential performance standard requirements for off-site SVPs, assuming such pools are located on land owned or controlled by the applicant. Once surveys are completed, survey forms should be submitted to our Agency for review well before the submission of any necessary permits. Our Department will need to review and verify any vernal pool data prior to final determination of significance.

Aquatic Resources

Fish Habitat - We recommend maintaining 100-foot undisturbed vegetated buffers from the upland edge of all intermittent and perennial streams and any contiguous wetlands. Maintaining and enhancing buffers along these resources is critical to the protection of water temperatures, water quality, natural inputs of coarse woody debris, and various forms of aquatic life necessary to support fish and other aquatic species. Riparian buffers also provide critical habitat and important travel corridors for a variety of wildlife species. Stream crossings should be avoided, but if a stream crossing is necessary, or an existing crossing needs to be modified, it should be designed to provide for full aquatic passage. Small streams, including intermittent streams, can provide crucial rearing habitat, cold water for thermal refugia, and abundant food for juvenile salmonids on a seasonal basis. Undersized crossings may inhibit these functions and become a frequent maintenance problem that causes reoccurring damage to the resource. Generally, MDIFW recommends that all new, modified, and replacement stream crossings be sized to span at least 1.2 times the bankfull width of the stream. In addition, we generally recommend that stream crossings be open bottomed (i.e., natural bottom), although embedded structures which are backfilled with representative streambed material have been shown to be effective in providing habitat connectivity for fish and other aquatic organisms. Construction Best Management Practices should be closely followed to avoid erosion, sedimentation, alteration of stream flow, and other impacts as eroding soils can travel significant distances as well as transport other pollutants resulting in direct impacts to fish, other aquatic life, and their habitats. In addition, we recommend that any necessary instream work occur between July 15 and October 1.

This consultation review has been conducted specifically for known MDIFW jurisdictional features and should not be interpreted as a comprehensive review for the presence of other regulated features that may occur in this area. Prior to the start of any future site disturbance, we recommend additional consultation with the municipality, and other state resource agencies including the Maine Natural Areas Program and Maine Department of Environmental Protection in order to avoid unintended protected resource disturbance.

Please feel free to contact my office if you have any questions regarding this information, or if I can be of any further assistance.

Best regards,



Emily Robinson
Resource Biologist