

# Town of Kennebunk, Maine



**Kennebunk Planning Board Agenda  
Room 301, 7:00 p.m.  
Monday, April 8, 2019**

**\*\*\* Please Note NO NEW BUSINESS AFTER 10:00 PM \*\*\***

- I. Open Meeting**
- II. New Business**
  - A. Zoning Ordinance Discussion with Resident(s)
  - B. Planning Board Policy Goal setting for 2019
- III. Other/Information Items**
- IV. Approval of Minutes**
  - A. March 25, 2019 Meeting Minutes
- V. Adjournment**

**Town of Kennebunk**  
**Planning Board**  
**Meeting Minutes**  
**Monday, March 25<sup>th</sup>, 2019**

**Present:** Chris MacClinchy—Chair; Richard B. Smith—Vice Chair; Janice Vance; Robert Metcalf; Edward Trainer—Alt.; David Smith—Secretary

**Also Attending:** John Stoll—Town Planner

**1. Open Meeting**

C. MacClinchy opened the meeting at approximately 7:03 PM. Today is Monday, March 25<sup>th</sup>, 2019.

**2. Agenda Items (I)**

C. MacClinchy states that the first item is a set of public hearings. He notes that the first one is a special exception application, a proposed dock by Port View [Condominiums] located at 148 Port Road. He states that [the Board] will hear from the Town staff for a brief overview, then will hear a presentation by the applicant. Then the Board will ask questions and will open up a public hearing to receive comments. Then [the Board] will close the public hearing and will deliberate on [possibly] taking action [on the application].

J. Stoll states that this is project number 0419, proposed by Port View Condominium Association to locate a private recreational dock in on the river, entirely for canoes and kayaks. He notes that this application has been reviewed and approved by the Maine Department of Environmental Protection [MDEP] and the Army Corp of Engineers. He states that the Planning Board held a site walk on March 2<sup>nd</sup>, 2019 and held a public hearing on March 25<sup>th</sup>, 2019. He states that there is a prepared Findings of Fact and that [Town] staff has proposed conditions of approval that are “pretty standard” to the Board, [that] “no lighting shall be installed on the proposed dock;” “that the dock system shall be removed by October 15<sup>th</sup> and shall be installed no earlier than April 15<sup>th</sup>;” and that “no paints, stains, or waterproofing shall be applied.” He states that “other than that,” everything is in order.

Marsha Curtis introduces herself as the secretary of the Port View Condominium Association. She introduces Ashley Griffith, chair of the Landscape Committee; Denise White, chair of the Dock Committee; Andy Armitage, Association President; as well as members from the “Port View family,” Marie Rossi and Ann Rinaldi. She notes that they represent the owners of Port View in petitioning for permission to have a modest seasonal dock on shared water front. She notes that Port View is three buildings that when standing on the Bridge in the Port [they are on the right of the river]. She notes that there are four buildings, with three on the water and one on the rear

woodland edge of the property. They are 21-units owned by 21-owners. She notes that Port View occupies 720-feet of Kennebunk River frontage but since construction in [19]77 the Port View residents have never had easy, safe access to the water. She states that efforts have been made to install a dock but were stopped for three factors: the owners could not agree on placement; there were concerns about an increase in insurance costs; and the permit process was “too daunting.” She states that an “interim solution was found, seen in the upper left photo,” on the north end of the lawn, a 3-foot by 5-foot platform that was built with steps to a 10-foot flat embankment. She notes that the embankment is covered by water at high tide and exposed at low tide. She states that the embankment drops down to the river basin floor below. She notes that residents “scooch” their kayaks off the embankment for the time that it is covered with water. She states that since the platform’s installation, the north end of the property has become a spot for boat launches. She states that 100% of [the Port View] owners agreed to a dock placement. She states that as their community has aged, launching from the shore is too difficult and dangerous. She notes that their insurance agreed that [the residents] are safer with a dock than without one. She states that they have become aware environmentally that scooching [the boats] may be affecting the shore and the [growth]. She states that the proposed docks system shown in the “middle left diagram” is installed and designed by Great Northern Docks and will be assembled at Port View. She notes that they have worked with Darren Fickett [of Great Northern Docks] and the Maine DEP and the Army Core [of Engineers], [which] gave them the “go ahead.” She states that they believe the planned dock will meet all their needs while having the least impact on the waterfront. She states that the dock will have a stationary dock that is 4-feet by 12-feet, a hinged ramp that is 4-feet by 16-feet, and a float that is 8-feet by 8-feet. She states that the full dock will be secured by a stationary dock with an aluminum frame and the decking will be installed at 4-feet above the lower embankment. She notes for further protection they will have a perforated decking material made of fiber-glass reinforced polypropylene to allow air, light and rain water to reach the marsh grass. She states that hand-driven galvanized steel and aluminum friction piles attach to the frame by set screws, will secure the stationary dock to the land. She states that the piles will be hand-driven into the land in “standard fashion,” using a 10-pound sledge-hammer and driving cap over the top of the pipe. She states that if hard-packed soil should make this method impossible, an auger type footing will be used. She states that in muddy soil a 10-inch pipe foot may be used to expand the area. She notes that the hinged ramp—as the diagram shows—will be connected to a stationary dock at one end and the float at the other with reinforced hinged plates; it will also be made of the perforated decking, or a more typical synthetic plank-style decking, depending on final costs. She states that the float will be provided with skids to protect the river bottom at low-tide. She notes that it will be anchored to the basin floor using a chain crossing method standard for floating structures and fluctuating bodies of water. She states that each of the two mooring systems will be 30-feet long and will have 30-feet of galvanized mooring chain, attached to a concrete block and an anchor screwed into the mud flat beneath. She states that 30-feet was determined in consultation with Darren Fickett and Army Corp of Engineer’s agent, Colin Greenan. She states that, post-installation, Great Northern Dock’s engineers will inspect the tackle systems for stability at high

and low tides, and will adjust accordingly. She states that the dock system will be seasonal and temporary. She notes that it will be sitting astride but not touching or attached to the old platform. She notes that this will obscure the old platform and limit the number of structures visual on the shore-front—an aesthetic as well as environmental benefit. She states that it will be positioned in what is a protected cover, 65-feet from the abutter to the north. She notes that [this is] their only abutter, at approximately the same distance from the center river channel and its flow of water and boaters. She states that, off-season, the dock system will be stored on the flat lawn area between building one and an area off-shore, where kayaks and canoes are currently stored. She states that she is petitioning for their permit tonight. She notes that they hope they can move from their clumsy entry [into the river] and crude platform to a simple dock much like the one “in the bottom left,” and to give the residents a safe, simple, and environmentally friendly [structure].

J. Vance has no questions.

D. Smith states that he missed the site walk and missed the previous meetings. He notices that from the depiction that is hand-drawn for how the dock will rise and fall, he wonders what type of augured material [will go] into the mud flat.

M. Curtis states that she is “not an engineer” but that it is a 280-pound “piece of cement” that has goes into the ground below. She states that presumably the 280-pound cement piece will provide a “good deal” of stability.

D. Smith wonders if there is any intention to take the anchoring out in the winter. M. Curtis states that that is the idea. She notes that her assumption was that they had to, but it seems foolish to her and not an environmentally sound operation.

C. MacClinchy states that the mooring blocks will stay in the river. D. Smith states that the float and the ramp come out [of the river].

M. Curtis states that the ramp and the float are made to be removed and they have a “friend” that will help [them with this task].

D. Smith states that re-auguring and disturbing resource is not a good idea. He wonders, in terms of storage, if “this area” is moved or if it is upland grasses.

M. Curtis states that it is mowed and some of it is weed-wacked. She states that it is “basically a lawn.”

D. Smith wonders about retaining the “old platform.” M. Curtis states that they were told by Maine DEP that because it is fixed to the ground [they can’t use the platform for the new dock]. She notes that the new dock is astride [the old platform] because they can’t attach to it and detach it in the off-season. She states that it can’t be moved then. She notes that they have 4-feet above the marsh grass to “go over” [the old platform] and to angle their dock to the right and away from “Mr. Smith’s” [the abutter’s] dock area.

D. Smith states that “part of the concern” is to remove what is there is to disturb the shoreland zone.

R. Metcalf has not questions. He states that M. Curtis did a “wonderful job.”

R. Smith states that he has no questions on the project. He states that M. Curtis’ presentation should be [an example for] all applicants.

E. Trainer shares his colleagues appreciation.

C. MacClinchy opens up the public hearing and invites any members of the public to speak.

Ralph Smith introduces himself as an abutter on the “north side” of where the dock is going in. He states that he has also had a dock adjacent to [the proposed] dock. He states that he wants to make some comments on why this dock [and its users] should be aware of some of the other problems surrounding “it.” He notes that “back in 1984” a “very nice old gentleman” lived in the condos and had a sailboat that he used to sail out “there” in the bay. He notes that [his name was] Tom Curry. He states that one day when he was out sailing around Ralph Smith happened to be mowing his lawn. He states that a gust of wind blew T. Curry’s hat off into the water about 40-feet out farther than the [proposed] dock is going in. He notes that when it got to be low tide, T. Curry came over and climbed off Ralph Smith’s dock which has a ladder to the mud flats. He noted that T. Curry started to walk out on the marsh and the mud flats to get his hat, but as he got out there a little way he sunk down in the mud and the harder he tried to get out, the deeper he went. He notes that right “off that area” the mud is very soft. He notes that T. Curry kept going “down and going down” and he was yelling for help. He states that he called to others and they called to get help from the Fire Department, which is almost across the street. He notes that [the Fire Department personnel] didn’t know what to do, but finally one of them took off their shoes and ran to help T. Curry. He notes that [this Fire Department member] also “went down” above his knees and he was in deep trouble. He states that “they all” started looking and saying, what do we do now.” He notes that they got planks and put them on the surface where it can hold someone up. He states that what he is trying to emphasize is there are places “right out in that area” where is mud is “very, very” soft and if you step in the wrong places, you can hold yourself in the mud and can’t get out without help. He states that he wants to make that comment so all the people that might be there or that might come up to the dock—strangers and so forth—[can be aware of this]. He states that those who are making the docks should be aware of the problems there might be there.

Ralph Smith notes that the other point he wanted to make was that he has a “discharge permit” because the lot he has his house on is too small to put in a leach field. He notes that the pipe runs out right in the middle of the basin where it curves around and goes out beyond the end of the land. He states that it is below the surface of the water at low tide and if a boat is coming in there—to the dock, a little motor boat or something—the pipe is not buried very deep. He notes that if a boat should hit it—which happened once—it is very difficult to repair it.

M. Curtis states that they will check with him and [his daughter] Kathy to see where [the pipe] is.

Ralph Smith states that there are rocks on it. He states it is “checked by this date every year.” He notes that the water is clear enough to drink when it comes off because it has a septic tank and leach field and a chlorinator, but still the State is trying to “get rid of that.” He notes that it did break once. He states that if “you get” in a vessel and “go north” you have to go over “that pipe.” He states that you can see people standing on that “piece of land that shows up at low tide out there” that have walked up from the south with water behind it. He notes that it is very tricky out there and he wanted to make that known to [the public]. He states that [the pipe] is difficult because you can’t get out there to repair it. He states that he was the “first one” to “put anything out there” and it has it in his deed that his lot where it meets the water was bought. He notes that his grandfather ran a ferry down the river years ago and [would] haul off in floats and repairs in winter time. He notes that the lot that has been “your lot” [the condominium’s lot] has been surveyed a “number of times.” He states that his deed says that together with all the rights of the channel [and] of the creek adjoining the above described lot. He states that this means that legally he has “all rights to that.”

M. Curtis states that they will angle their dock so as to give Ralph Smith’s plenty of space.

Ralph Smith states that he just wanted to make those three comments. He states that also if the people from the condo want to watch people out there from the new dock, they will have to cut branches off the maple tree. He notes that when the “fellow” cuts the law, he has to “stoop under” [the tree].

C. MacClinchy wonders if there are any other comments.

[Seeing no other comments], C. MacClinchy closes the public hearing. He wonders if the Board members have any other questions or comments.

C. MacClinchy begins reading the Findings of Fact form:



## Town of Kennebunk Community Development Department

### Planning Board

March 25, 2019

*John Stoll*  
*Town Planner*

ect Summary – Special Exception Application  
Fact, Conditions of Approval, and Conclusions of Law

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Project: Portview Condo Dock  
Project # #04-19  
Property Owners: Portview Condominium Association.  
Address: 148 Port Road

#### **Determination of Completeness:**

The application appears to be complete.

#### **Project Description:**

The applicant is requesting permission to locate a private recreational dock at 148 Port Road

#### **Project Details:**

Zoning: Coastal Residential (CR); Resource Protection District (RP)  
Existing Use: Single Family Residential

#### **1. General Comments**

- 1.1 The following comments pertain to shoreland/special exception plan set for Portview Condominium Association.
- 1.2 The application has been reviewed and approved by Maine DEP and the Army Corps of Engineers.
- 1.3 The Planning Board held a site walk on March 2, 2019.
- 1.4 The Planning Board held a public hearing on March 25, 2019.

#### **2. Article 7.1.A. Special Exception Approval Standards**

- 2.1 Hazards to vehicular or pedestrian traffic Met X; Not Met   ; Not Applicable

**Fact(s)**

- The proposed dock is intended for private use and is not expected to increase the volume of vehicular traffic at this location.

**Conclusion:** Based upon this fact and those in the record the Planning Board finds that the proposed use will not create hazards to vehicular or pedestrian traffic on the roads and sidewalks serving the proposed use as determined by the size and condition of such roads and sidewalks, lighting, drainage, intensity of use by both pedestrians and vehicles and the visibility afforded to pedestrians and the operators of motor vehicles.

2.2 Water pollution Met X; Not Met   ; Not Applicable   

**Fact(s)**

- The applicants have proposed a seasonal dock system comprised of a 4' x 12' stationary dock, 4' x 16' hinged ramp, and 8' x 8' float.
- The proposed float will be anchored in the water using two helical anchors screwed into the mud flat – chain-crossing method: 30 feet out and crossing underneath the float.
- The approach ramp will be elevated 4' above the marsh grass. Perforated grill decking with 47% open surface will be utilized to allow light, water and air to pass through the structure.
- Skids will be provided to protect the mud flat at low tide.
- Stationary dock piles will be hand driven into the ground utilizing a 10 pound sledge hammer and a driving cap over the top of the pipe. If hand driving is not possible, then the contractor may use an auger type of footing. In very soft muddy soils the contractor may use a pipe foot to expand the area.
- Off-season storage will be on the North end lawn area where canoes and kayaks are currently stored.

**Conclusion:** Based upon this fact and those in the record the Planning Board finds that the proposed use will not cause water pollution, sedimentation, erosion, contaminate any water supply nor reduce the capacity of the land to hold water so that a dangerous aesthetically unpleasant, or unhealthy condition may result.

2.3 Unhealthful conditions Met X; Not Met   ; Not Applicable   

**Fact(s)**

- A private recreational dock is not expected to generate smoke, dust, or other airborne contaminants.

**Conclusion:** Based upon this fact and those in the record the Planning Board finds that the proposed use will not create unhealthful conditions because of smoke, dust, or other airborne contaminants.

2.4 Nuisances to neighboring properties Met X; Not Met   ; Not Applicable   

**Fact(s)**

- The proposed seasonal dock is for private recreational use.

**Condition of Approval:** No lighting shall be installed on the proposed dock

**Conclusion:** Based upon this fact and those in the record the Planning Board finds that the proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard or unreasonably restrict access of light and air to neighboring properties.

2.5 Peculiar physical characteristics Met X; Not Met   ; Not Applicable   

**Fact(s)**

- There are no known peculiar physical characteristics that will create or aggravate adverse environmental impacts on the applicant's or surrounding properties.

**Conclusion:** Based upon this fact and those in the record the Planning Board finds that the proposed location for the use has no peculiar physical characteristics due to its size, shape, topography, or soils which will create or aggravate adverse environmental impacts on surrounding properties.

2.6 Depreciation of economic value Met X; Not Met   ; Not Applicable   

**Fact(s)**

- The proposed use is for a private dock. There are other private docks currently located within the area.

**Conclusion:** Based upon this fact and those in the record the Planning Board finds that the proposed use has no unusual characteristics atypical of the generic use which proposed use will depreciate the economic value of surrounding properties; and

2.7 Shoreland Overlay District Met X; Not Met   ; Not Applicable   

**Fact(s)**

- MDEP and Army Corps of Engineers have reviewed this project and have not identified any concerns regarding fisheries, aquatic life, bird, and other wildlife habitat.
- There are no public facilities within the project location
- There is no public access within the project site.
- The project location has not been identified on the Town of Kennebunk Open Space Map.

- There are no known archaeological or historic sites at the project site.

**Conclusion:** Based upon these facts and those in the record the Planning Board finds that the proposed use will not result in damage to spawning grounds; will conserve shoreland vegetation and visual points of access to waters as viewed from public facilities along with access to waters. The proposed use will conserve the Town's Open Space Plan priority areas; will avoid problems associated with flood plain development; will protect archaeological and historic resources; and will not have an adverse impact on wildlife habitat.

2.8 Resource Protection District Met X; Not Met   ; Not Applicable   

**Fact(s)**

- This is a private recreational dock and not a residential use.
- Functionally dependent water structures are exempt from the requirements of Article 7.A(8)(f).

**Conclusion:** Based upon these facts and those in the record the Planning Board finds that there is no other location on the property where the structure can be built; the lot on which the structure is proposed was established and recorded prior to June 15, 1994; there is only one dwelling on this lot. Additionally, all proposed buildings, sewage disposal systems and other improvements are located on natural ground slopes less than twenty percent; and located outside the floodway of the 100-year floodplain. The total ground floor area of the structure has been limited to a maximum of 1,500 square feet; and all structures are set back from the normal high-water line to the greatest practical extent.

3. Article 10. A. Section 3E. Piers, Docks, Wharves etc. Met X; Not Met   ; Not Applicable

3.1 New structure extending over or below normal high water line of a water body or wetland.

**Fact(s)**

- This proposal has been reviewed by the MDEP, ACOE and permits have been provided by the applicant.

**Conclusion:** Based upon this/these facts and those in the record the Planning Board finds that this use will obtain all applicable permits from MDEP as well as all other applicable Federal and state approval as required.

3.2 Additional Standards Met ✓; Not Met   ; Not Applicable   

**Fact(s)**

- No endangered or threatened species habitat is identified within this project area.
- The proposed area of the float is less than 200 square feet (8'x8').
- This property has a minimum of 60 feet of frontage (Appears to exceed 800')

- The float system is located more than 25 feet from the property line in either direction, they were proposing 65-feet.
- Reference 2.2 of this report
- No lighting has been proposed for inclusion at this location.

**Condition of Approval:**

- (a) The floats and ramp will be removed by October 15<sup>th</sup> and installed no earlier than April 15<sup>th</sup>.
- (b) No paints, stains, and waterproofing shall be applied

**Conclusion:** Based upon this/these facts and those in the record the Planning Board finds that this application makes sufficient efforts to protect the habitat of species considered endangered or threatened by Maine IF&W and/or US Fish and Wildlife service, and is not located within a flood hazard zone.

**4. Decisions.**

- 4.1 Consider voting the application complete
- 4.2 Consider approving the Findings of Fact, Conditions of Approval, and Conclusions of Law for Project # 04-19
- 4.3 Consider approving the Special Exception application, Project #04-19, requested by the Portview Condominium Association to install a private recreational dock at 148 Port Road subject to the following condition(s) of approval:
  - (a) No lighting shall be installed on the proposed dock.
  - (b) The dock system shall be removed by October 15<sup>th</sup> and installed no earlier than April 15<sup>th</sup>.
  - (c) No paints, stains, and waterproofing shall be applied.

During the readings of the Findings of Fact form, C. MacClinchy noted in 2.7 Shoreland Overlay District that, just to clarify, the project location has not been identified as part of the special [exception], as it is not in the open space map as a priority area.

Concerning 2.8, Resource Protection District, J. Stoll states that this standard involves residential uses. C. MacClinchy wonders if he is saying it doesn't apply. J. Stoll states that it is exempt from the standard. R. Metcalf notes that [the Board] is talking about dwelling unit 4 and that the existing condominium unit is there, there are no additional structures on the site.

D. Smith moves that the Town of Kennebunk Planning Board consider the application complete for project 0419.

R. Smith seconds the motion.

All are in favor, none opposed. The motion passes 5/0.

D. Smith moves that the Town of Kennebunk Planning Board approve the Findings of Fact, Conditions of Approval and Conditions of Law for project 0419 for the Port View Condominium dock, Port View Condominium Association, 148 Port Road, as conditioned.

R. Smith second the motion.

D. Smith states that he would like to add that the application did disclose on 2.3 that the fabrication [of the dock] will be off-site. He notes that this is a "real plus" not to have any construction material done on site. He states that he just wants to add that comment because [the Board] has to consider pressure-treated wood and having it cut.

All are in favor, none opposed. The motion passes 5/0.

D. Smith moves that the Kennebunk Planning Board approve the Special Exception Application proposed dock submitted by Port View Condominiums at 148 Port Road, as conditioned.

R. Smith seconds the motion.

All are in favor, none opposed. The motion passes 5/0.

## **2. Agenda Items (II)**

C. MacClinchy states that the next item is a public hearing on a subdivision amendment application for a Lake Brook Farm application, submitted by Woody Creek Development, LLC, at 37 Port Road. He states that they will hear from the Town Planner, then will hear from the applicant as to the nature of the application, then the Board will ask questions, and then the public hearing will be opened. He notes that after the public hearing they may decide to take action.

J. Stoll states that [Town] staff does recommend that the application is complete based on the fact that the Planning Board is determined that this subdivision amendment will be reviewed utilizing

the procedures for a minor subdivision final application. He notes that this is project number 0519. He wonders what the address is for the accessor.

David McCoullough states that [the address is] 37 Port Road [in Kennebunk, Maine].

J. Stoll states that this is for tax map 80, lot 85. He notes that the application proposes to break-off 7.9-acres of lot 3 in the approved Lake Brook Farms subdivision; 7.26-acres removed from lot 3 would then be sold to an abutting property owner and 0.64-acres would then be donated to the Kennebunk Land Trust. He notes that the major subdivision was approved by the Board in January of 2018 and so this is a lot line adjustment. He states that he doesn't believe he has much [else to say] other than tonight is the public hearing.

D. McCoullough states that what they are proposing to do is donate 0.64-acres [of land] to abut a parcel that was donated last year [to the Kennebunk Conservation Trust], which abuts their 40-acre "Secret Garden" conservation area. He notes that they are looking to sell 7.26-acres to an abutter on Montgomery Court. He states that they are not selling a lot to them, [as] this area will be merged with the existing lot. He states that [this abutter] will now have an 8 ½ acre lot instead of a 1 ½ [acre lot]. He notes that there are no proposed roads, no landscaping, "nothing done," [and that] it is just being purchased for privacy in their back yard. He states that the Planning Board had asked to put a note that any future division [of the land] will need Planning Board approval and that is in the notes of the revised plan.

J. Vance has no questions.

D. Smith states that he was not present for the [site walk]. R. Smith states that they didn't have a site walk. D. Smith states that they originally did with the approval in 2017. D. McCoullough corrects [that it was in] 2018.

D. Smith states that [the site] was visited in his absence and he wants to say that he knows that there is not any further division of this as it is conveyed as one piece to be added [to the additional lot].

D. McCoullough states, "correct."

D. Smith wonders if there is any condition that there should be no development in terms of either roads or utilities or anything. He wonders if there is a restriction that [goes with] this conveyance.

D. McCoullough states, "no." C. MacClinchy notes that there are no restrictions, [as] there is nothing proposed.

R. Metcalf states that the note that they asked to put on [the plan concerned] is the abutter decides to do something in terms of creating another division, it has to come to the Planning Board. He states that this is "bearing on them" [and] is understood as a purchase of sale. He notes that they are held to that provision. D. McCoullough states, "correct."

D. Smith states that as long as this [note] includes infrastructure.

R. Metcalf [wonders where] the note regarding that all plans of the approved subdivision [was]. J. Stoll states that “it is on there,” and that “it is a standard one.”

R. Smith and E. Trainer have no questions.

C. MacClinchy opens up the public hearing. He asks for any questions or comments [from the public] to come to the podium.

Robin Meade introduces herself as an abutter on lot 2 of Surrey Lane. She states that they want to make sure that the lot line is not part of their lot line. She notes that Montgomery [Court] goes past Canterbury [Circle] and then Montgomery continues. She wonders when lot 2 will be developed. She states that a previous company looked into purchasing the development and lot 2 had a problem. She states that there is a “burrow pit” that was used to extract sand and “they would” fill it in with clay material. She states that she was looking at building a house on previously disturbed soil, which is uncompacted. She states that she spoke with a contractor and they advised her to have a soil engineer come in to test and make sure that the soil would be compact enough to hold a heavy structure. She noted that [the soil engineer] advised “it to be removed” just to make sure the foundation would be okay. She states that another issue is the presence of subsurface aquifers, and controlled surface runoff. She states that this could lead to a problem with foundation. She notes that she is “down from lot 2” and their neighbors had someone behind [and] “above them” [build a house], and [these neighbors] have had issues with water in their basement now. She states that she did a walk around the property but lot 2 there was a problem with what she said about the burrow pits.

R. Metcalf states that the prior developer was putting the house where the fill is. He notes that this one is not in the same location, the house is not in the same location.

C. MacClinchy asks for more [public] comments or questions. [No one steps forward].

C. MacClinchy closes the public hearing.

C. MacClinchy begins reviewing the Findings of Fact form:



John Stoll  
Town Planner

## Town of Kennebunk Community Development Department

### Planning Board

March 25, 2019

Project Summary – Amendment to Approved Subdivision  
Findings of Fact, Conditions of Approval, and Conclusions of Law

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Project: Lake Brook Farms, Subdivision Amendment  
Project # 05-19  
Applicant: Woody Creek Development, LLC  
Address: 37 Port Road  
Map/Block/Lot: Map 80, Lot 85

#### **Determination of Completeness:**

Staff recommends that the application is complete. The Planning Board has determined that this subdivision amendment will be reviewed utilizing the procedures for a Minor Subdivision Final application.

#### **Project Description:**

This application proposes to break off 7.90 acres of “Lot 3” in the approved Lake Brook Farms subdivision. 7.26 acres removed from Lot 3 would then be sold to an abutting property owner; and .64 acres would be donated to the Kennebunk Land Trust Land. This major subdivision was previously approved by the Board in January of 2018.

#### **Project Details:**

Existing Lot Area: 12.5 acres  
Proposed Lot Area: 4.60 acres and 7.90 acres  
Proposed Net Lot Area: 105,314 sf, and 63,901 sf  
Permitted Lot Area: 40,000 sf

Zoning: Suburban Residential (SR) & Shoreland Overlay  
Existing Use: Single Family Residential & Vacant

### **3. General Comments**

3.1 The following comments pertain to a single sheet plan revision application of Woody Creek Development, LLC and dated January 16, 2019.

3.2 The Planning Board held a public hearing on March 25, 2019.

**2. Kennebunk Planning Board Subdivision Review Standards MRSA §4404 Review Criteria**

2.1 **Pollution.** Met X; Not Met \_\_; Not Applicable \_\_

**Fact(s)**

- No activities have been proposed that would cause undue water or air pollution as a component of this residential subdivision amendment proposal.

**Conclusion:** Based upon this fact and those in the record the Planning Board finds that the proposed development will not result in undue water or air pollution.

2.2 **Sufficient Water** Met X; Not Met \_\_; Not Applicable \_\_

**Fact(s)**

- Lake Brook Farms will continue to utilize KKW public water.
- Land split from lot will be added to abutting properties and no development is proposed at this time.

**Conclusion:** Based upon these facts and those in the record the Planning Board finds that there is sufficient water available for the foreseeable needs of the subdivision.

2.3 **Municipal Water Supply.** Met X; Not Met \_\_; Not Applicable \_\_

**Fact(s)**

- Reference 2.2 of this report.

**Conclusion:** Based upon this fact and those in the record the Planning Board finds that the proposed subdivision will not cause an unreasonable burden on an existing water supply.

2.4 **Erosion** Met X; Not Met \_\_; Not Applicable \_\_

**Fact(s):**

- The Subdivision amendment proposes to sell and donate the land in question to abutting property owners. No development is proposed as a result of this application.

**Condition of Approval:** No future division of land may occur without prior Planning Board approval.

**Conclusion:** Based upon this fact and those in the record the Planning Board finds that the proposed development will not cause unreasonable soil erosion or reduce the capacity of the land to hold water.

2.5 **Traffic** Met X; Not Met   ; Not Applicable   

**Fact(s):**

- No additional vehicular traffic is expected from this proposed lot line adjustment

**Conclusion:** Based upon these facts and those in the record the Planning Board finds that the proposed development will not cause unreasonable highway or public road congestion.

2.6 **Sewage Disposal** Met X; Not Met   ; Not Applicable   

**Fact(s)**

- Lake Brook Farms currently utilizes private septic systems.
- Reference Section 2.4 of this report

**Conclusion:** Based upon these facts and those in the record the Planning Board finds that the development provides for adequate sewage disposal.

2.7 **Municipal Solid Waste Disposal** Met X; Not Met   ; Not Applicable   

**Fact(s):**

- Will utilize public trash hauler or private disposal service.

**Conclusion:** Based upon this fact and those in the record the Planning Board finds that the proposed development will not cause an unreasonable burden on the ability of the Town to dispose of solid waste.

2.8 **Aesthetic, Cultural, and Natural Values** Met X; Not Met   ; Not Applicable   

**Fact(s)**

- No significant aesthetic, cultural sites identified within the project area
- Reference 2.4 of this report.

**Conclusion:** Based upon this fact and those in the record the Planning Board finds that the proposed development will not have an undue adverse effect on the scenic or natural beauty of the area.

2.9 **Conformity with Local Ordinances and Plans.** Met X; Not Met   ; Not Applicable

**Fact(s)**

- Application has been reviewed by Code Enforcement, Town Planner, and Town Engineer for conformity with local ordinances and plans.
- Lot area calculations have been included on the plan.

**Conclusion:** Based upon this fact and those in the record the Planning Board finds that the proposed development is in conformance with duly adopted regulations of the Town of Kennebunk.

2.10 **Financial and Technical Capacity** Met X; Not Met   ; Not Applicable   

**Fact(s):**

- Applicant has secured the services of development professionals that have completed a number of projects within Kennebunk and the surrounding communities successfully.
- Reference 2.4 of this report.

**Conclusion:** Based upon this fact and those in the record the Planning Board finds that the developer has adequate capacity to meet the standards of these regulations.

2.11 **Surface waters; outstanding river segments** Met X; Not Met   ; Not Applicable   

**Fact(s):**

- Reference 2.4 of this report.

**Conclusion:** Based upon this fact and those in the record the Planning Board finds that the proposed subdivision will not have an adverse effect on the quality of any body of water.

2.12 **Ground Water** Met X; Not Met   ; Not Applicable   

**Fact(s):**

- Reference 2.2 and 2.4 of this report.

**Conclusion:** Based upon these facts and those in the record the Planning Board finds that the proposed subdivision will not adversely affect the quality or quantity of ground water

2.13 **Flood Areas** Met X; Not Met   ; Not Applicable   

**Proposed Fact(s):**

- The proposed development is not located within a 100-year flood area.

**Conclusion:** Based upon this fact and those in the record the Planning Board finds that this standard has been met.

2.14 **Freshwater Wetlands** Met X; Not Met   ; Not Applicable   

**Fact(s):**

- Freshwater wetlands have been identified on the Subdivision plan.

**Conclusion:** Based upon this fact and those in the record the Planning Board finds that freshwater wetlands have been identified on the plan.

2.15 **River, Stream or Brook** Met X; Not Met   ; Not Applicable   

**Fact(s):**

- Lake Brook has been identified on the plan.

**Conclusion:** Based upon this fact and those in the record the Planning Board finds that the developer has identified on the subdivision plan any river, stream, or brook within or abutting the proposed subdivision.

2.16 **Storm Water** Met X; Not Met   ; Not Applicable   

**Fact(s)**

- Reference 2.4 of this report.

**Conclusion:** Based upon these facts and those in the record the Planning Board finds that the subdivision provides for adequate storm water management.

2.17 **Spaghetti-lots prohibited** Met X; Not Met   ; Not Applicable   

**Fact(s)**

- The portion of the lot that directly abuts Lake Brook will be added to the existing land of the Kennebunk Land Trust.
- The lot to depth ratio of those lots does not exceed a 5 to 1 ratio.

**Conclusion:** Based upon this fact and those in the record the Planning Board finds that the lots within this subdivision do not have a lot depth to shore frontage ratio greater than 5 to 1.

2.18 **Lake Phosphorus Concentration.** Met X; Not Met   ; Not Applicable   

**Fact(s)**

- No Lakes are located on or near this subdivision.

**Conclusion:** Based upon this fact and those in the record the Planning Board finds that this standard is not applicable.

2.19 **Impact on Adjoining Municipality** Met \_\_; Not Met \_\_; Not Applicable X

**Fact(s):**

- This subdivision plan does not cross or abut any municipal boundaries.

**Conclusion:** Based upon this fact and those in the record the Planning Board finds that this standard is not applicable.

2.20 **Lands Subject to Liquidation Harvesting** Met X; Not Met \_\_; Not Applicable \_\_

**Fact(s):**

- No liquidation harvesting has been proposed as a component of this application.

**Conclusion:** Based upon this fact and those in the record the Planning Board finds that timber on the parcel being subdivided has not been harvested in violation of rules adopted pursuant to Title 12, Section 8869, Subsection 14.

**3. Decisions**

3.1 The Board may consider determining the application complete at this evening's meeting.

3.2 The Board may consider approval of the Findings of Fact, Conditions of Approval, and Conclusions of Law for project #05-19

3.3 The Board may consider granting final approval to Project # 05-19; the application of Woody Creek Development, LLC to amend the approved 5 Lot Major Subdivision of Lake Brook Farms in order to adjust lot lines and convey land within the subdivision to abutting property owners subject to the following condition(s) of approval:

- (a) No future division of land may occur without prior Planning Board approval.
- (b) All plans and documents used to approve this subdivision are made a part and are a condition of plan approval.

During the reading of the Findings of Fact, in section 2.1 “Pollution,” J. Stoll notes that many of [the standards] will not be applicable but that they are standard facts.

D. Smith moves that the Town of Kennebunk Planning Board consider the application for project 0519 complete.

R. Smith seconds the motion.

D. Smith states that in the beginning [the Planning Board] was talking about the plan that was dated January 16<sup>th</sup>, 2019. He states that the update that shows the split is February 5<sup>th</sup>, 2019 by Dana Libby.

All are in favor, none opposed. The motion passes 5/0.

D. Smith moves that the Town of Kennebunk Planning Board approve the Findings of Fact, Conditions of Approval, and Conclusions of Law for project Lake Brook Farms, subdivision amendment, project 0519, Woody Creek Development LLC. He notes that the address is 37 Port Road and the tax map considered is tax map 80, lot 85.

R. Smith seconds the motion.

All are in favor, none opposed. The motion passes 5/0.

D. Smith moves that the Town of Kennebunk Planning Board grant final approval to project 0519, Woody Creek Development to amend the approved 5-lot major subdivision of Lake Brook Farms in order to adjust the lot lines and convey land within the subdivision to abutting property owners, subject to the following conditions of approval: no future division of land may occur without prior Planning Board approval; and that all plans and documents used to approve this subdivision are made a part in [the Planning Board’s] plan approval.

R. Smith seconds the motion.

All are in favor, none opposed. The motion passes 5/0.

### **3. Approval of Minutes of Previous Meeting**

C. MacClinchy begins to review the previous meeting’s minutes for Monday, March 11<sup>th</sup>, 2019. He notes that E. Trainer is a voting member [as he was present at the March 11<sup>th</sup>, 2019 meeting]. C. MacClinchy notes that he will abstain [from voting], as will R. Metcalf and D. Smith [as they were not present at the March 11<sup>th</sup>, 2019 meeting]. He notes that the only voting members [who were present at the March 11<sup>th</sup>, 2019 meeting] are J. Vance, E. Trainer and R. Smith.

J. Vance moves to accept the Town of Kennebunk Planning Board meeting minutes for Monday, March 11<sup>th</sup>, 2019, as corrected.

E. Trainer seconds this motion.

All are in favor, none opposed. The motion passes 3/0 with 3 abstentions.

#### **4. Other Business**

J. Stoll states that he has plans [for the Board members] to sign.

R. Metcalf states that the Comprehensive Plan is going before the Board of Selectmen to go over the chapters and will be “finishing up.” He states that [this will take] 4-meetings. He notes that once [the Comprehensive Plan Committee] has made some edits, [the edited version] can be given to the Planning Board to start looking at. He states that this will give [the Planning Board] more than a week’s time [to review the Comprehensive Plan].

C. MacClinchy thanks R. Metcalf. He welcomes back D. Smith. He thanks the Board members for “covering” for him in his absences in the “last couple of meetings.”

D. Smith wonders if it is appropriate to ask a status for [certain] projects [from before he had an extended Planning Board absence]. He wonders about the “wedding venue in between upper square and Portland mixed-use.” R. Smith states that nothing else has come up [about that application]. J. Stoll states that [the applicant] submitted a formal application and was looking to go before the Historical Committee. He notes that then [the applicant] will come before [the Planning Board] again.

D. Smith wonders about the “Shoreline” [application]. J. Stoll states that 3 Shoreline Way has not been formally acted on, it has been delayed. D. Smith wonders what the approval was for the turning circle. J. Stoll states that [an abutting property owner] wanted other documents and is working with Code Enforcement. D. Smith states that he was concerned with the site walk that [the area] had been morphed to “serve residents” and “not the Fire Chief.” J. Stoll states that this would have to be figured out within the association.

#### **5. Adjourn**

R. Smith moves to adjourn.

D. Smith seconds the motion.

All are in favor, none opposed. The motion passes 5/0.

The meeting adjourned at approximately 8:44 PM.

Respectfully submitted by Megan Hall.

**Signature Page:**

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**Signature Date:**