

Baldwin Planning Board

Meeting Minutes 8/13/2020

Public Hearing: A public hearing for proposed Sand Pond Woods and Freemont Woods subdivisions was opened at 7:00PM and included a short synopsis of the two projects by a representative of the owner. After a short question and answer session, and having no additional questions from the public, the public hearing was closed.

The Chairman called the meeting to order at 7:09PM.

Roll Call: Planning Board Members: David Strock, Jo Pierce, Matt Fricker, Matt Sanborn, Glenn Reynolds, Bob Flint

Selectmen: Dwight Warren

CEO: West Sunderland

Others: Numerous members of the public and presenters

Agenda: 1. Review minutes of the last meeting
2. Initial consideration of Sand Pond/Freemont Woods
3. Request of CEO to confirm Nature's Wilderness Resorts' compliance with

CUP

4. Discussion with Longroad Energy regarding the Shoreland Zoning Ordinance

1. Minutes from the 7/23/2020 meeting, which had been previously distributed to the board members, were approved by the board.
2. Old Business: David Strock requested if signed drawings for the subdivision approved at the Jul 23 meeting had been returned to the CEO by the owner as requested. Wes Sunderland stated that he had not yet received them.
3. Review and discussion of the Preliminary Planning Application Packet for the Freemont Woods and Sand Pond Woods Subdivisions presented by BH2M.

The board started with a review of the fees required to be submitted with the Preliminary Planning application as defined in the Subdivision Ordinance. The fees are \$25.00 per acre or per lot, whichever is greatest. In addition the developer is required to deposit \$15,000.00 per subdivision with the town to be used for possible technical support for the planning board.

Unused portions of the \$15,000.00 deposits would be returned upon approval of the subdivisions.

Freemont Woods: 34.652 Acres @ \$25.00 each = \$866.30 plus \$15,000.00

Sand Pond Woods: 51.303 Acres @ \$25.00 each = \$1282.58 plus \$15,000.00

Total requirement: \$32,148.80

The Chairman led the board through a review of the submissions to confirm that they contained the elements required by the ordinance. Once that was deemed satisfactory, the board went through each submission line by line. The submitter commented that he didn't anticipate much change between the current and final submittal since they would not be doing any construction, only selling the bare lots.

Sand Pond Woods was first reviewed. It consists of 7 lots, 6 of which are being developed.

Comments from the board were:

1. The subdivision was being considered with lots 4/5 and 2/6 having shared curb cuts at the street (Sand Pond Road) and therefore needed deed restrictions accordingly. In addition, lot 6 access to Sand Pond Road was via a right of way between lots 3 and 4 so a deed restrictions were needed for that. Also, any future driveway access to lot 7 (owned by Scott Mason) would need to be off Grant Road since it was also part of the subdivision (but not part of the development).
2. BH2M requested waivers for a high intensity soil survey and a hydrologic assessment for the subdivision based on local conditions. The board requested written justification for such waivers and the appearance of experts to answer questions when the board next considers the waivers.
3. There was a short discussion on the ordinance's requirements for access to arterial roads.
4. There is no power distribution poles on Sand Pond Road so the board stipulated that preplanning is needed and deed restrictions added, if needed, for pole placements to ensure service to all lots in the subdivision.

Freemont Woods was next reviewed. It consists of 8 lots. Comments from the board were:

1. The subdivision was being considered with lots 1/2, 4/5, and 6/7 having shared curb cuts at the street and therefore needed deed restrictions accordingly. In addition, lot 3 needs a deed restriction providing for driveway access on Freemont Avenue only.
2. BH2M requested waivers for a high intensity soil survey and a hydrologic assessment for the subdivision based on local conditions. The board requested written justification for such waivers and the appearance of experts to answer questions when the board next considers the waivers.

3. There is no power distribution poles on Sand Pond Road so preplanning is needed and deed restrictions added, if needed, for pole placements to ensure service to all lots in the subdivision.

That completed the review of the preliminary submissions. It was noted that it didn't look like the board would need to hire technical expertise to review the applications. It was pointed out the final submissions required a fee of \$300.00 per lot.

3. The next item for discussion was the proposed request for the CEO to confirm Nature's Wilderness Resort's compliance with the CUP. Jo Pierce recused himself from the board for the period of this discussion. The chairman briefly reviewed the rationale for having a compliance record for NWR, given the phased approach approval for the campground. There was also a discussion by the board concerning the e-mails between Planning Board Chairman David Strock and Baldwin's attorney, David Laurie, concerning the Planning Board's place in the ongoing review of NWR's compliance with the CUP. Matt Sanborn suggested that the request be sent to the Board of Selectmen vs the CEO. It was also suggested that the compliance dates for each item be added to the request. It was voted by the board to send the request for confirmation of compliance to the Board of Selectmen. The document would become a part of the project folder. A Copy of the document along with the related e-mails is attached to these minutes.

4. Longroad Energy presented a question that arose from their work on a proposed solar farm in Baldwin that needs to be online by the end of 2021 to meet their contractual dates to sell the generated electricity. The issue as seen by the company is that the Baldwin Shoreland Zoning Ordinance Map was developed from aerial surveys and the exact location of wetlands and associated resource protection zones was not verified by a detailed survey on the ground. Brooke Barnes presented why this is an issue for the solar farm project (forested wetlands vs shrub wetlands) and the impact on areas within the subject property that could be used to place solar panels. Gordon Smith representing Longroad Energy provided a suggested amendment to the Baldwin ordinance that would provide a means for applicants to request adjustments to wetland districts based on detailed surveys. The suggested amendment was lifted from Scarborough's ordinance and has already passed approval by Maine DEP. Any amendment of the Baldwin ordinance requires approval by a town meeting, and then DEP, and Baldwin has traditionally tried to present these at the annual town meeting in March.

There was a discussion of the cost of how the ordinance could be amended and the cost and timelines associated with the process. Gordon Smith indicated that waiting until March 2021 to implement an amendment to the ordinance left the project scant time to gain approval for and build their solar generating system by the end of 2021. Matt Sanborn pointed out that the Board had not yet received a CUP for the project which also has a timeline associated with it as well. There was some discussion about what Longroad Energy believed they needed next, to initiate a CUP or gain an amendment to the ordinance.

Matt Fricker suggested we get a representative of the Southern Regional Planning Commission (Mr. Feldman) to our next meeting to discuss the issue and explain why the shoreland zoning map is not exact.

The board voted to invite Mr. Feldman to the next meeting to discuss the way forward.

New Items:

5. Agreed that the notice of subdivision definition changes required by state law be provided to the Selectmen for posting on with the town ordinances. A copy is attached.

6. Matt Fricker initiated an extended discussion of NWR's compliance with the CUP as relates to an upcoming dirt bike event in October. He stated his position that the upcoming event violated the letter and the intent of the CUP. Matt Sanborn stated that he disagreed. Wes Sunderland, the CEO indicated that he didn't find the event a violation of the CUP. Bob Flint indicated he and several others present had attended a Selectmen's Workshop the week before at which the Select Board indicated they had consulted with the town attorney and received an opinion that the event did not violate the CUP. After additional discussion, the issue was tabled.

A motion to adjourn was moved and seconded. It was voted unanimously

Submitted by: Bob Flint

REQUEST FOR CONFIRMATION OF COMPLIANCE
NATURE’S WILDERNESS, LLC

The Planning Board requests that the Selectmen ask the Baldwin Code Enforcement Officer inspect the campground operated by Natures Wilderness, LLC (aka Nature’s Wilderness Resort)(NWR) and confirm the following and return this completed form to the Planning Board within 14 calendar days of _____:

**DATE OF
COMPLIANCE**

CUP REQUIREMENT (CUP LINE NUMBER)

- _____ The development and operations of the campground are contained within Phase 1
 - The campground has no more than 60 campsites (19 RV and 41 cabin/tent) (reference to CUP line no. 217-220)
 - No development has been performed for Stage 2 or Stage 3 (228-238)
 - All development activity confined to Green Phase 1 section of drawings submitted with CUP Application (p. 182 of 2/27/20 CUP application)

- _____ Updates have been made to onsite storm water pond (221)

- _____ Signage improvements made to Senator Black Road, consistent with diagrams provided as part of CUP Application (225-226)(635-639) (p. 184 of 2/27/20 CUP application)

- _____ Swimming Pool has been installed and in compliance with state laws (223) (382-384)

- _____ NWR has obtained a MRPA Wetland Alteration Permit (264)

- _____ Signage has been placed on Route 113 and Brown Road (305-309) (466-467)

- _____

**DATE OF
COMPLIANCE**

CUP REQUIREMENT (CUP LINE NUMBER)

- _____ Signage has been posted on trails at NWR's property boundary (330-331)(640-643)
- _____ Trail signage states ATV traffic must remain on trails specifically indicated on maps (336-339)
- _____ NWR has the appropriate number/location of garbage and rubbish disposals (373-377)
- _____ NWR prohibits parking on Marston Road (465-466)
- _____ NWR has been periodically watering Marston Road by use of a watering truck or like machine (490-493)(p. 11 of CUP application)
- _____ Confirm Letter of Credit still in effect (644-646)
- _____ Confirm NWR has not sold or leased any portion of the 462 acre lot used by NWR (695)
- _____ Confirm that NWR has secured all required permits and licenses to operate as a Campground

Confirm that NWR has secured all required permits and licenses to engage in the activities conducted at on campground, such as food services.

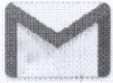
The Planning Board also requests that the CEO obtain and provide the Planning Board with these documents:

- A copy of NWR's campground safety regulations (310-315)
- A copy of NWR's trail map or picture of mounted map (329-330)
- A copy of the current water analysis for NWR (363-365)

- A copy of all required permits and licenses NWR has to operate as a campground
- A copy of all required permits and licenses NWR has to engage in activities at the campground.
- Complaints by residents or citations/warning issued by the CEO to NWR.

DATED: _____

SIGNED: _____



David Lourie's Advice re Nature's Wilderness

1 message

David A. Lourie <david@lourielaw.com>

Thu, Aug 13, 2020 at 4:44 PM

Reply-to: david@lourielaw.com

To: David Strock <dastrock@gmail.com>

Cc: Bob Flint <rflint57@gmail.com>, Glen Reynolds <rileysauto@roadrunner.com>, Josiah Pierce <unclejo@cpierce.com>, Matt Fricker <stickmanfrick@ptd.net>, Matthew Sanborn <matthewns@yahoo.com>, Nichol Ernst <nichol@summitachievement.com>, Danielle Taylor <dtaylorbaldwin@gmail.com>, James Dolloff <jdolloffbaldwin@yahoo.com>, dwightwarren4@gmail.com

David, thanks for your enlightening e-mail, as I was not aware of the condition imposed on phase 1 approval. However, the existence of the condition does not change the import of my earlier e-mail. The Board cannot *require* the CEO or selectmen to do anything that they do not wish to do, including the inspection you suggested, as you appear to concede in your e-mail.

Since a condition was on approval was imposed, and accepted by the Applicant, the Board can initiate the hearing process outlined in it, as an alternative to the usual NOV process, appealable to the ZBA, upon notice to the Applicant. If PB then determines there is sufficient evidence of violation, it may take action authorized by the condition. Any decision or action will be subject to appeal to the Board of Appeals, as well as effective judicial review.

Please note that enforcement of any *final* decision by the planning board *will always remain within the prosecutorial discretion of the CEO and the Board of Selectmen*. Any challenge to the exercise of prosecutorial discretion by the selectmen would be a case of 1st impression in this State, as to which I express no opinion other than it would be subject to an abuse of discretion standard - if it is justiciable at all.

[Quoted text hidden]



David Lourie's Advice re Nature's Wilderness

1 message

David Strock <dastrock@gmail.com>

Thu, Aug 13, 2020 at 12:28 PM

To: David A. Lourie <david@lourielaw.com>

Cc: Bob Flint <rflint57@gmail.com>, Glen Reynolds <rileysauto@roadrunner.com>, Josiah Pierce <unclejo@cpierce.com>, Matt Fricker <stickmanfrick@ptd.net>, Matthew Sanborn <matthewns@yahoo.com>, Nichol Ernst <nichol@summitachievement.com>, Danielle Taylor <dtaylorbaldwin@gmail.com>, James Dolloff <jdolloffbaldwin@yahoo.com>, dwightwarren4@gmail.com

Mr. Lourie -

You email was forwarded to me with the statement from Jim Dolloff that "the Planing Board do not have the authority to send the CEO any where to do an inspection?" I assumed Selectman Dolloff intended it to be a statement, not a question.

You received partial facts and, quite frankly, I am surprised about the breadth of your statements/opinions, particularly when you have not reviewed the underlying documents or understand the situation at hand. Your insertion of the word "bias" into this issue is dangerously uninformed.

Attached is the document that I suggested the Planning Board discuss at the next meeting. It is styled as, and intended to be, a request from the Planning Board to understand the state of affairs at the Nature's Wilderness campground. The project is a three phase campground project. The Planning Board approved phase 1 and fully expects the applicant to return to the Board to discuss Phase 2 in the near future. The applicant made a variety of promises about compliance on Phase 1 with the understanding that adhering to those promises would play into the Board's consideration of Phases 2 and 3. Everyone involved in the decision, including the applicant, agreed that the campground's compliance on Phase 1 would demonstrate the applicant's ability to expand the project to Phase 2 and 3. You can watch the Planning Board meetings to confirm these statements by the applicant. The campground's initial CUP is attached, which expressly refers to the multiple phases.

It is particularly noteworthy to this discussion that the CUP provides the following, language that you gave to us a few years ago -

5. The Planning Board may schedule a hearing (upon reasonable notice to the Applicant and the public) to determine whether: there is a violation of the Approval or any the condition thereof (including those contained herein) or any other violation of any provision of local, state, or federal law. If the Board determines that a violation has occurred and is either continuing or is likely to recur, the Board may rescind this approval or take such other action to amend or modify the Approval as the Board deems appropriate to protect the public health, safety, or welfare

Are you now telling us that invoking this provision of the CUP would constitute bias? Why did you give us this language if you now believe we cannot use it? Your claim that the Board's prior experience with an applicant, and the Board's prior knowledge of an applicant's compliance with the initial phases of a multi-phase project, constitutes some form of bias makes absolutely no sense. That would mean that every planning board would have to recuse itself due to bias whenever a particular applicant approaches the board a second time, whether on a phased project or with a new project.

Instead of pursuing the more formal process set forth in the CUP, I thought it made sense to "ask" (not direct, demand or require) the CEO to give us a status update concerning the campground. The CEO is the one who will tell us whether the applicant is in compliance; we are not acting as a quasi-judicial body. The Planning Board assumes that the CEO has been checking on the campground to confirm at least minimal compliance with the CUP. I also sent a copy of the draft request to the applicant (Gerry Brown, who also happens to be a Baldwin Selectman) so he could see it and, I had hoped, he could just let the Board know the status of some of the items. Instead, one or more of the Selectmen contacted you.

The Planning Board fully appreciates that the CEO works for the Selectmen. We also fully appreciate that the CEO and Selectmen are the enforcement arm of the Town.

Irrespective of your email, I intend to ask the Board to discuss the attached request and, if the Board choses to do so, to ask the CEO to respond. If the CEO chooses not to respond, or the Selectmen direct him not to respond, the Board will have to figure out how it wants to proceed.

This entire email chain will be placed into the public record of the Planning Board meeting minutes, including any response that you make.

David Strock
Chair, Planning Board

On Thu, Aug 13, 2020 at 9:02 AM Danielle Taylor <dtaylorbaldwin@gmail.com> wrote:

David and Wes,

Please see below information that Jim Dolloff requested from our attorney David Lourie.

Thank you,

Danielle

Town of Baldwin
534 Pequawket Trail
West Baldwin, Maine 04091

(Ph) 207-625-9107

Far and away the best prize that life has to offer is the chance to work hard at work worth doing. ~ Theodore Roosevelt

----- Forwarded message -----

From: **David A. Lourie** <david@lourielaw.com>
Date: Thu, Aug 13, 2020 at 7:57 AM
Subject: Re: Fwd: Planning Board
To: Danielle Taylor <dtaylorbaldwin@gmail.com>
Cc: James Dolloff <jdolloffbaldwin@yahoo.com>, Wes Sunderland <wsunderland@roadrunner.com>

I was driving when Jim called me to discuss the recent planning board letter to the CEO, so the discussion was short, and my recollection may not be complete.

I reaffirmed my earlier e-mail to you which was to the effect that the Planning Board has no role to play in the enforcement of the Ordinance. I recall telling him that any request from the Planning Board to the CEO (outside of a pending proceeding for a permit or approval) has the same status as a request from any other person, resident, or abutter to conduct an investigation of compliance. It is merely information that the CEO can act upon or disregard without legal consequence, as the CEO is responsible only to the Selectmen.

A planning board request to the CEO outside of a pending proceeding is merely a request from the individual planning board members. It is at best inappropriate for an administrative body which has been exercising quasi-judicial functions with regard to this development, *and likely to be called to do so again as to later phases of this development* to direct the CEO to do anything that the CEO, who is responsible to the Select Board alone, that he does not believe worthy of his time or effort.

I believe that I also expressed concern that such actions by planning board members as sending this letter could form the basis for requests for recusal or appeals *for bias on the part of members supporting it* in future proceedings where such members are constitutionally required to keep an open mind, even if they dislike or distrust a particular developer.

I have not seen the applicable approval granted. However, I believed that this developer is likely to come again before the Board for approval of additional phases or amendments where he is entitled to a fair hearing on the merits of his proposals.

Please note that I am not counseling the CEO to *necessarily* disregard the contents of the communication received from the planning board, only that he treat them like any other request he may receive from any other members of the public, upon which no action *is legally required*.

I am copying Jim Dolloff and the CEO to avoid confusion. They should feel free to share this communication, with members of the Planning Board. If directed by the Select Board I will share my legal concerns as to potential claims of bias directly with the members of the Planning Board.

----- Forwarded message -----

From: **Jim Dolloff** <jdolloffbaldwin@yahoo.com>
Date: Wed, Aug 12, 2020, 5:39 PM
Subject: Planning Board
To: Danielle Talor <dtaylorbaldwin@gmail.com>

Would you send David Strock and Wes an email that we verified from David Lourie that the Planing Board do not have the authority to send the CEO any where to do an inspection?

Sent from Yahoo Mail for iPhone

--
The above is from the Law Offices of David A. Lourie, 189 Spurwink Avenue, Cape Elizabeth, ME 04107

Tel: Office: (207) 799-4922 / cell: (207) 749-3642 / Fax: (207) 221-1688.

This communication may contain attorney-client privileged, or other confidential matter that is exempt from



Proposed amendment to Baldwin Shoreland Zoning Ordinance

Gordon Smith <gsmith@verrill-law.com>
To: "dastrock@██████████"

Mon, Aug 10, 2020 at 11:33 AM

Hi Dave,

I am writing on behalf of Longroad Energy, which is seeking to develop a commercial solar array in Baldwin on land owned by Jo Pierce. We would like the Baldwin Planning Board to review and make a recommendation to the Select Board on a proposed amendment to the town's Shoreland Zoning Ordinance.

Specifically, we are proposing an amendment to Section 10 of the Baldwin SZO, which deals with interpretation of shoreland zone boundaries. The amendment would establish a process by which the Planning Board or CEO could establish actual shoreland zone boundaries based on field data provided by a wetland scientist.

Under the current ordinance, the Planning Board and CEO do not have the authority to correct the boundaries drawn on the town's shoreland zoning map, which is based on an often inaccurate desktop approximation of the location of wetlands. Truing up wetland locations based on field data now requires a town vote. One drawback of the process under the current ordinance is that it asks the town voters to decide where the edge of a given wetland is. That is obviously not a political question that is particularly well suited for town meeting.

The benefit of the amendment is that it would promote more accurate wetland delineation in town shoreland zone permitting, rather than requiring a town vote every time a landowner or applicant proposes to correct the imprecise boundaries depicted on the town's shoreland map.

I would suggest that a good starting place for such an amendment is Section 10 of the Scarborough shoreland zoning ordinance, which is attached. This provision of the Scarborough ordinance has been reviewed and deemed acceptable by the Attorney General's Office and the DEP. As you know, amendments to the shoreland zoning ordinance need to be approved by the DEP.

Is this something that the board could take up at its meeting this Thursday the 13th? Thank you very much for your attention.

Gordy

Gordon R. Smith COUNSEL

Verrill Dana LLP

One Portland Square

Portland, ME 04101-4054

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Scarborough SZO Section 10(14041709.1).docx

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Section 10. Interpretation of District Boundaries

The depiction of the boundaries of the shoreland zone and of the individual shoreland districts on the Official Shoreland Zoning Map is merely illustrative of their general locations. The exact boundaries shall be determined by on-site inspection and measurement from the normal high-water line or upland edge of a wetland. Such on-site inspection and measurement may be requested by the property owner at any time or by the applicant at the time of filing an application for a permit or approval under this Ordinance. As part of such on-site inspection and measurement, the property owner or the applicant for any permit or approval may present evidence from persons with training and/or experience relevant to the identification, delineation and classification of wetlands and/or the delineation of the high-water line or upland edge of a wetland. Such evidence shall be presented to the Code Enforcement Officer (or to the Planning Board if an application for a Planning Board permit or approval is pending) and the Code Enforcement Officer (or the Planning Board if an application for a Planning Board permit or approval is pending) shall make a determination as to the exact boundaries, subject to review by the Board of Appeals pursuant to section 16(G)(1)(a) of this Ordinance.

Unless otherwise set forth on the Official Shoreland Zoning Map, district boundary lines are property lines, the centerlines, of streets, roads and rights of way, and the boundaries of the shoreland area as defined herein. Where uncertainty exists as to the exact location of district boundary lines, the Board of Appeals shall be the final authority as to location.