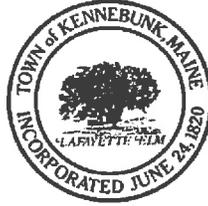


# Town of Kennebunk, Maine



## KENNEBUNK PLANNING BOARD Monday, January 11, 2016 MEETING MINUTES

**MEMBERS PRESENT:** Chris **MacClinchy**, Chair; Richard **Smith**, Vice Chair; Robert **Metcalf**,  
Matthew **Randall**, Janice **Vance**, Aleksandra **Jean**

**MEMBERS ABSENT:** David **Smith**, Secretary

**FROM THE TOWN:** Judith **Bernstein**, Town Planner

**ALSO PRESENT:** Kyle **Noel**, Applicant, Hartigan Acres Subdivision  
Steve **Noel**, Owner, Hartigan Acres Subdivision  
Jim **Fisher**, President, Northeast Civil Solutions  
Kristen **Gould**, Resident, Emmons Road

### 1. Open Meeting

The Chair called the meeting to order at 7:00 p.m.

### 2. Approval of Meeting Minutes

Having no objection from the Board members, and in consideration of the attendees, **MacClinchy** moved review of Minutes to the end of the meeting.

### 3. Public Hearing on Proposed Revision to the Hartigan Acres Subdivision by Kyle Noel

**MacClinchy** introduced and outlined the agenda item to be addressed as follows:

- An update from the Town Planner;
- Questions from Board members;
- Comments from the public;
- Board decision for any action to be taken

**Bernstein** reviewed the project as detailed in her memo of January 6, 2016 "*Summary of the Monday, January 11, 2016, Agenda*" (provided to the Board in the Planning Board packet). She identified the applicant, owner, site location, and nature of the request.

Her review comments of note included:

- A site walk was conducted on the property;

- Location of the septic site and proximity to the wells;
  - Separation distance does not meet minimum standards;
  - The applicant's consultant indicated that a variance of the standard was not needed;
  - The building inspector indicated (Paul **Demers** email to Judy **Bernstein** dated January 11, 2016, provided as Enclosure (1), which is incorporated, by reference, into these minutes) that he needs to sign off on the fact that the separation distance does not meet minimum standards;
  - The building inspector recommended that the Board condition any approval upon the applicant providing, and the Building Inspector approving, the necessary information that confirms that the distance meets state requirements;
- Signoff document from Water District; and
- Wording of Note 11 on the plan regarding changes to the plan requiring Planning Board approval.

Kyle **Noel**, Applicant, Hartigan Acres Subdivision provided the following responses:

Issue: Applicant needs a signoff document from Water District (**Bernstein**).

Response: Applicant will not be able to use town water due to lack of an easement, necessitating the need for a well. (**Noel**)

Issue: Applicant must revise wording of Note 11 (**Bernstein**).

Response: The note does not contain any reference to "future changes requiring Planning Board approval" because the plan is exactly what the applicant wants, any changes would be very minor and the applicant didn't want to return to the Planning Board just for minor changes.

**Bernstein** responded that the note is intended to notify all future owners and not just the present owner. (**Noel**)

**Metcalf** noted that the two major issues requiring a return to the Planning Board are:

1. Changing the Lot lines; and
2. The driveway location.

He suggested using standard language from the ordinance addressing changes, and providing the wording to the applicant so it can appear on the plan.

**Bernstein** responded that she can provide the correct wording from the ordinance.

Kyle **Noel** agreed to add it to the plan.

Issue: What will be done with bushes in the drive way entrance (**Randall**).

Response: Will check with Public Works for any right of way issues before removal. (K. **Noel**)

Issue: Applicant must add to plans grading and storm water management details (**Randall**).

Response: Agreed to add to the plan. (K. **Noel**)

Issue: Drive way access culvert requirement noted on the site walk (**Bernstein**).

Response: The storm drain is on the opposite side. (K. **Noel**)

Issue: Need to create easement from Thompson Road to access the well. (**Randall**).

Response: Agree. (K. **Noel**)

Issue: Need to verify well setbacks to the septic and any other existing wells in the area (**Randall**).

Response: Agree. (K. **Noel**)

Issue: Need to indicate the location of neighbors well (**Vance**).

Response: One is under the basement and a second one is behind the house (Steve **Noel**).

Indicating the location on the plan, Kyle **Noel** remarked that the design for his septic meets the 100 ft. setback from the neighbor's well point (100 ft. behind their house) just identified by Steve **Noel**.

There being no further questions from Board members regarding this agenda item, **MacClinchy** open the meeting for public comment.

There being no comments from the public regarding this agenda item, **MacClinchy** closed the meeting for public comment.

**MacClinchy** noted clerical item corrections needed on the plan notes can be done as conditions of approval.

**Metcalf** asked the applicant if there have been any existing well water problems. Steve **Noel** replied in the negative.

**Metcalf** recommended as a condition of approval, the applicant provide a letter from a well driller for any new well.

**Bernstein** concurred, adding that a letter is partially what the Building Inspector wants to see.

Regarding the septic design, **Bernstein** remarked that the applicant will have to submit a new disposal system design application because the Lot configuration has changed.

**Bernstein** added that the CEO won't issue a building permit until he gets the valid information he needs.

**Metcalf** made the following observations:

- Updating the HHE200 just to show the correct Lot lines presents no major change that the Board need to review;
- The project is not large or complicated enough to warrant an additional review;
- The issues raised at this meeting can be included as conditions of approval;
- The CEO will be checking the septic and well locations setbacks;
- The applicant will be updating the notes provided by the Town Planner;
- Grading information will be added; and
- The Town Engineer can review the notes.

Richard **Smith** concurred.

There being no further comments regarding this agenda item, **MacClinchy** proceeded to address the Findings of Fact and Conditions of Approval.

# Town of Kennebunk Planning Board

## FINDINGS OF FACT AND CONDITIONS OF APPROVAL

### FINAL SUBDIVISION PLAN OF Hartigan Acres Plan Revision of Lot 1 Subdivision Name

1. Property Owner: Stephen and Judith Noel
2. Site Location: 35 Thompson Road
3. Size and # of Lots/units: 48,778 Sq. Ft. – Proposed Division into 2 Lots
4. Zoning District (s): West Kennebunk Village Residential
5. Assessor's Map 1 Lot 3
6. Applicant: Kyle Noel has provided deed from Parents

has shown  has not \_\_\_\_\_ shown legal interest in the property (deed, option, purchase and sale agreement).

7. INFORMATION REVIEWED BY PLANNING BOARD:

- Staff reviews (Engineer, Fire Chief, Planner, Code Enforcement Officer) \_\_\_\_\_
- Site Walk completed by Board 12/19/2015
- Conservation Commission \_\_\_\_\_
- State/Federal Reviews \_\_\_\_\_

CONDITIONS:

- 1.
- 2.
- 3.

APPROVED BY:

DATE:


8. The Kennebunk Planning Board has reviewed the above noted development utilizing the Kennebunk Standards for Reviewing Land Subdivisions and the Kennebunk Zoning Ordinance. Based upon the application and materials submitted in support of the application, together with the evidence submitted at the public hearing on the application, the Planning Board makes the following findings with respect to the standards of Title 30-A § 4404 and Article 11, Section 8 of the Zoning Ordinance Guidelines listed below:

**A. M.R.S.A. 30-A §4404**

1. **Pollution.** Will not result in undue water or air pollution. In making this determination it shall at least consider: The elevation of land above the sea level and its relation to the floodplains, the nature of soils and sub-soils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable state and local health and water resources regulations.

Standard is met  X , not met \_\_\_\_\_, met with following conditions and or waivers  
Applicant shall provide an updated HHE200 Form to the Code Enforcement Officer

Rationale for negative determination: \_\_\_\_\_  
\_\_\_\_\_

2. **Sufficient water.** Has sufficient water available for the reasonably foreseeable needs of the subdivision.

Standard is met  X , not met \_\_\_\_\_, met with following conditions and or waivers  
Applicant shall provide the Building Inspector the necessary information he needs to confirm that the well separation distance meets state requirements

Rationale for negative determination: \_\_\_\_\_  
\_\_\_\_\_

3. **Municipal water supply.** Will not cause an unreasonable burden on an existing water supply, if one is to be utilized.

Standard is met \_\_\_\_\_, not met \_\_\_\_\_, met with following conditions and or waivers  
Not Applicable

Rationale for negative determination: \_\_\_\_\_  
\_\_\_\_\_

4. **Erosion.** Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

Standard is met  X , not met \_\_\_\_\_, met with following conditions and or waivers

Rationale for negative determination: \_\_\_\_\_  
\_\_\_\_\_

5. **Traffic.** Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed, and, if the proposed subdivision requires driveways or entrances onto a state or state aid highway located outside the urban compact area of the Town, the Department of Transportation has provided documentation indicating that the driveways or entrances conform to Title 23, section 704 and any rules adopted under that section.

Standard is met  X , not met \_\_\_\_\_, met with following conditions and or waivers

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Rationale for negative determination: \_\_\_\_\_

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6. **Sewage disposal.** Will provide for adequate sewage waste disposal and will not cause an unreasonable burden on Town services if they are utilized.

Standard is met  X , not met \_\_\_\_\_, met with following conditions and or waivers

Applicant shall provide an updated HHE200 Form to the Code Enforcement Officer

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Rationale for negative determination: \_\_\_\_\_

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7. **Municipal solid waste disposal.** Will not cause unreasonable burden on the ability of a municipality to dispose of solid waste and sewage if municipal services are to be utilized.

Standard is met  X , not met \_\_\_\_\_, met with following conditions and or waivers

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Rationale for negative determination: \_\_\_\_\_

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8. **Aesthetic, cultural and natural values.** Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.

Standard is met  X , not met \_\_\_\_\_, met with following conditions and or waivers

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Rationale for negative determination: \_\_\_\_\_

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9. **Conformity with local ordinances and plans.** Is in conformance with the duly adopted subdivision regulation, comprehensive plan, and zoning ordinance of the Town of Kennebunk.

Standard is met  X , not met \_\_\_\_\_, met with following conditions and or waivers

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Rationale for negative determination: \_\_\_\_\_

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10. **Financial and technical capacity.** The sub divider has adequate financial and technical capacity to meet the standards of these regulations.

Standard is met  X , not met \_\_\_\_\_, met with following conditions and or waivers

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Rationale for negative determination: \_\_\_\_\_

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11. **Surface waters; outstanding river segments.** Whenever situated, in whole or in part, within 250 feet of any pond, lake, river or tidal waters, will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.

Standard is met \_\_\_\_\_, not met \_\_\_\_\_, met with following conditions and or waivers  
Not Applicable

Rationale for negative determination: \_\_\_\_\_  
\_\_\_\_\_

12. **Ground water.** Will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.

Standard is met  X , not met \_\_\_\_\_, met with following conditions and or waivers

Rationale for negative determination: \_\_\_\_\_  
\_\_\_\_\_

13. **Flood areas.** The sub divider will determine, based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area the subdivider will determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan shall include a condition of plat approval requiring that principal structures in the subdivision shall be constructed with their lowest floor, including the basement, at least two feet above the 100-year flood elevation.

Standard is met \_\_\_\_\_, not met \_\_\_\_\_, met with following conditions and or waivers  
Not Applicable

Rationale for negative determination: \_\_\_\_\_  
\_\_\_\_\_

14. **Stormwater.** The proposed subdivision will provide for adequate storm water management.

Standard is met  X , not met \_\_\_\_\_, met with following conditions and or waivers  
Applicant shall provide more specific grading and storm water management information to be submitted to Code Officer with building permit application.

Rationale for negative determination: \_\_\_\_\_  
\_\_\_\_\_

15. **River, stream or brook.** Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38, section 480-B, subsection 9.

Standard is met \_\_\_\_\_, not met \_\_\_\_\_, met with following conditions and or waivers  
Not Applicable

Rationale for negative determination: \_\_\_\_\_  
\_\_\_\_\_

16. **Freshwater wetlands.** All freshwater wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.

Standard is met \_\_\_\_\_, not met \_\_\_\_\_, met with following conditions and or waivers  
Not Applicable

Rationale for negative determination: \_\_\_\_\_  
\_\_\_\_\_

17. **Spaghetti-Lots prohibited.** If any Lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond or coastal wetland as these features are defined in Title 38, section 480-B, none of these Lots created within the subdivision have a Lot depth to shore frontage ratio greater than 5 to 1.

Standard is met \_\_\_\_\_, not met \_\_\_\_\_, met with following conditions and or waivers  
Not Applicable

Rationale for negative determination: \_\_\_\_\_  
\_\_\_\_\_

18. **Lake phosphorous concentration.** The long-term cumulative effects of the proposed subdivision will not unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision.

Standard is met \_\_\_\_\_, not met \_\_\_\_\_, met with following conditions and/or waivers  
Not Applicable

Rationale for negative determination: \_\_\_\_\_  
\_\_\_\_\_

19. **Impact on adjoining municipalities.** For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.

Standard is met \_\_\_\_\_, not met \_\_\_\_\_, met with following conditions and or waivers  
Not Applicable

Rationale for negative determination: \_\_\_\_\_  
\_\_\_\_\_

20. **Lands subject to liquidation harvesting.** Timber on the parcel being subdivided has not been harvested in violation of rules adopted pursuant to Title 12, Section 8869, Subsection 14.

Standard is met \_\_\_\_\_, not met \_\_\_\_\_, met with following conditions and or waivers  
Not Applicable

Rationale for negative determination: \_\_\_\_\_  
\_\_\_\_\_

**B. Article 11, Section 8** (As applicable for multi-family and non-residential subdivisions)

1. The plan preserves the natural landscape insofar as practical and adequately uses the natural features of the site and/or new landscaping to define, soften, and screen the impacts of development.

Standard is met \_\_\_\_\_, not met \_\_\_\_\_, met with following conditions and or waivers  
Not Applicable

Rationale for negative determination: \_\_\_\_\_

2. For a nonresidential project, effective buffers are maintained or created between it and adjoining residential properties and residential zoning districts.

Standard is met \_\_\_\_\_, not met \_\_\_\_\_, met with following conditions and or waivers  
Not Applicable

Rationale for negative determination: \_\_\_\_\_  
\_\_\_\_\_

3. Filling, excavation and earth moving activity is carried out in a way that keeps erosion and sedimentation to a minimum.

Standard is met \_\_\_\_\_, not met \_\_\_\_\_, met with following conditions and or waivers  
Not Applicable

Rationale for negative determination: \_\_\_\_\_  
\_\_\_\_\_

4. Adequate provision has been made for surface drainage, so that removal of storm waters will not have an unreasonably adverse effect on neighboring properties, downstream water quality, soil erosion, or the public storm drainage system.

Standard is met \_\_\_\_\_, not met \_\_\_\_\_, met with following conditions and or waivers  
Not Applicable

Rationale for negative determination: \_\_\_\_\_  
\_\_\_\_\_

5. Adequate provision has been made for water supply and sewage disposal.

Standard is met \_\_\_\_\_, not met \_\_\_\_\_, met with following conditions and or waivers  
Not Applicable

Rationale for negative determination: \_\_\_\_\_  
\_\_\_\_\_

6. The site plan provides for safe access to and egress from public and private streets, with adequate parking and internal circulation.

Standard is met \_\_\_\_\_, not met \_\_\_\_\_, met with following conditions and or waivers  
Not Applicable

Rationale for negative determination: \_\_\_\_\_  
\_\_\_\_\_

7. Vehicular access to the site will be on roads which have adequate capacity to accommodate any additional traffic generated by the development.

Standard is met \_\_\_\_\_, not met \_\_\_\_\_, met with following conditions and or waivers  
Not Applicable

Rationale for negative determination: \_\_\_\_\_  
\_\_\_\_\_

8. The site plan provides for safe pedestrian circulation, both on-site and off-site.

Standard is met \_\_\_\_\_, not met \_\_\_\_\_, met with following conditions and/or waivers  
Not Applicable

Rationale for negative determination: \_\_\_\_\_  
\_\_\_\_\_

9. Exterior lighting does not adversely affect neighboring properties or streets.

Standard is met \_\_\_\_\_, not met \_\_\_\_\_, met with following conditions and or waivers  
Not Applicable

Rationale for negative determination: \_\_\_\_\_  
\_\_\_\_\_

10. Electrical and telephone utility lines and components serving the site will be placed in a manner that is not hazardous or unsightly.

Standard is met \_\_\_\_\_, not met \_\_\_\_\_, met with following conditions and or waivers  
Not Applicable

Rationale for negative determination: \_\_\_\_\_  
\_\_\_\_\_

**\*\*\* Based on the above noted findings, the Kennebunk Planning Board votes to**

**approve,**

**approve with the conditions noted above, or**

**deny**

**the Final Plan Application of**

Subdivision Plan Revision of Hartigan Acres

**Subdivision Name**

**MacClinchy** asked for a motion.

**A motion was made that the Findings of Fact and Conditions of Approval for final subdivision plan of Hartigan Acres Plan Revision of Lot 1, Property Owner: Stephen and Judith Noel, Site Location: 35 Thompson Road, Size and # of Lots/units: 48,778 Sq. Ft. – Proposed Division into 2 Lots, Zoning District (s): West Kennebunk Village Residential, Assessor's Map 1, Lot 3, Applicant: Kyle Noel has provided deed from Parents, has shown legal interest in the property by deed, with the following Conditions of Approval:**

- 1. That the Applicant update note 11 on the subdivision plan in accordance with recommendations from the Town Planner.**
- 2. That the updated HHE200 application be submitted to the Town Planner and the Code Enforcement Officer reflecting the change in the Lot configuration regarding the easement.**
- 3. That the Applicant provide well drilling documentation for the new proposed on-site well with a copy to the Town planner.**
- 4. A note to be added to the plan regarding grading and drainage around both structures and that it will not create any adverse drainage impacts on the adjacent properties.**

**MOVED: Metcalf**

**SECONDED: Richard Smith**

**DISCUSSION: Randall asked for a condition regarding the change of easement location along the property line.**

**Metcalf added:**

- 5. Add the additional easement along the proposed new driveway to provide access to the existing well.**

**SECONDED: Richard Smith**

**DISCUSSION: Randall asked for a condition to contact Public Works regarding the bushes in the right of way.**

**In addition to note 11, Randall asked for notes 8 and 9, referencing water lines, also be corrected.**

**Metcalf agreed.**

**SECONDED: Richard Smith**

**MacClinchy appointed alternate Jean as a voting member for this motion.**

**MODS: As amended.**

**VOTE: 5 for, 0 opposed; the motion carried.**

**MacClinchy** thanked the applicant moved to the next agenda item.

**4. Public Hearing Shoreland/Special Exception Application of Jason LaBonte for Proposed Construction of Shared Access Road across Ward Brook Tributary and across 100 Year Flood Plain**

**MacClinchy** introduced and outlined the agenda item to be addressed as follows:

- An update from the Town Planner;
- Presentation by the Applicant;
- Questions from Board members;
- Comments from the public; and
- Board decision for any action to be taken.

**Bernstein** reviewed the project as detailed in her memo of January 6, 2016 "*Summary of the Monday, January 11, 2016, Agenda*" (provided to the Board in the Planning Board packet). Her review comments of note included:

- Setback clarification for all wetland areas; and
- The Town Engineer request of a culvert enlargement from the present 8 inches.

**Bernstein** introduced **Jim Fisher**, President, Northeast Civil Solutions and suggested he provided a summary of any changes that were made after the last hearing.

Outlining his presentation, **Fisher** introduced himself and stated that he intended to review the following subjects:

- A reorientation of the site plan;
- A review of town staff requests and questions; and
- A summary of the site walk.

**Fisher** began an overview of the site plan, locating principal features.

Addressing the Town Planner's comments, **Fisher** provided the following responses:

Issue: Topographical data.

Response: Added to the plan.

Issue: Driveway connection locations.

Response: Added to the plan.

Issue: Extended road turnout.

Response: Added to the plan per Town Fire Chief request as discussed earlier in the site plan overview.

Issue: Tributary setbacks.

Response: There are no setbacks within the wetland according to the State's perspective; however, a 100 ft. setback around both Tributary areas has been added to the plan. The building envelopes are depicted in gray.

Issue: A note stipulating that any revisions to the plan regarding buildings or wetland crossings must be approved by the Town.

Response: Added to the plan.

Summarizing his responses, **Fisher** asked the Board if they had any input.

**Jean** opened a discussion regarding the following issues:

- A portion of Lot "C" appears to be in the Shoreland overlay:
  - Lot "C" is in the RC Zone, the building area stops at the RP Zone (**Fisher**); and
  - They are in the Shoreland zone which allows some disturbance, but outside the 100 ft. setback which allows no disturbance (**Bernstein**).
- Access to Lot "C" would cross the wetland:
  - No stream or wetland crossing is required for Lot "C" access; however, Town approval for a driveway through the setback area would be required (**Fisher**).

- Roadway slope providing adequate drainage:
  - The roadway has a slight crown built in. The road is 16 feet wide with a 2:1 slope resulting in storm water having a positive flow on both sides (**Fisher**).

**Metcalf** asked if the owner had any plans regarding future buildings for the two additional rear Lots. **Fisher** replied that the Lots in question are not owned by the Applicant.

**Bernstein** expressed concern regarding the following issues:

- Moved Lot lines:
  - Some lines had minor adjustments in order to align the Lot widths along Emmons Road allowing for 4 parcels (**Fisher**).
- Setback line from the brook to lot "C" in the shoreland zone is labeled 245 feet:
  - The line is mislabeled; it should be 250 feet (**Fisher**).

**Randall** expressed concern regarding the following issues:

- Easements [Are easements specifically located from deeds or are they open-ended? Can easements be moved?]:
  - The easements are perpetual and were formed when the properties were created (**Fisher**).
- Building envelopes spacing with respect to the property lines and setbacks:
  - Agreed (**Fisher**).
- Fire turnaround enlargement:
  - Previously affirmed (**Fisher**).
- State permits:
  - Tacit approval has been granted from DEP (**Fisher**); and
  - The applicant anticipates the final state permit being a condition of approval (**Fisher**).

**Fisher** provided a lengthy explanation for the DEP delay, highlights included:

- The area is a potential "North American Long Eared Fuzzy Nosed Bat" habitat;
- The Army Corps of Engineers has jurisdiction;
- The size of the culverts was increased at the request of the Army Corps of Engineers;
- The DEP must wait for the Army Corps of Engineers to issue a permit; and
- The Army Corps of Engineers does not have deadlines.

**Metcalf** added the following information:

- U S Department of Fish and Wildlife is the deciding authority that Army Corps of Engineers relies on for the issuance of a permit;
- The Orono, ME Fish and Wildlife office is currently staffed by one employee; consequently, the decision could take months; and
- No clearing of any vegetation in the designated areas can be started until a study has been conducted [or tree removed is conducted] between October 15<sup>th</sup> and April 12<sup>th</sup> and a permit issued.

**Randall** continued his summary of concerns by asking about the following issues:

- Access to the rear building portion should be explained in a note:
  - Agreed (**Fisher**).
  - The note can be added but even though there is a setback for building and driveway, cutting restrictions exist in the Shoreland Zone area (**Bernstein**).

- The note will be modified to include any restrictions (**Fisher**).

**Vance** expressed concern regarding the following issues:

- Access driveway surface:
  - The driveway surface will consist of gravel (**Fisher**).
- Snow storage:
  - 8 feet on either side of the travel way and a designated area at the road's end is available for snow storage (**Fisher**).
- Garbage pickup:
  - Trash and garbage will be brought to the end of the road for pickup (**Fisher**).

Richard **Smith** asked if maintenance will be shared by the two Lots and if a plan has been formalized. **Fisher** replied in the affirmative regarding shared maintenance and added that formal agreement drafting is in progress.

Richard **Smith** noted that having a formal maintenance agreement finalized, with a copy provided to the Town, will be a condition of approval.

**Fisher** agreed.

**Bernstein** asked if the Kelley property "right of way" goes all the way to the back land.

**Fisher** replied that the "right of way" continues to the 3 ½ acre Lot in the back.

**MacClinchy** expressed concern regarding the following issues:

- Access to the Lots:
  - The access is correct as shown on the plan (**Fisher**).
- Lot ownership in the plan notes:
  - The plan will be updated to show the current Lot owners which were not available on the original survey used for the plan (**Fisher**).

**Metcalf** asked **Bernstein** if the Fire Chief's final sign-off had been received regarding his review of the widened turnaround.

**Bernstein** replied in the negative, stating that he has not seen this plan revision containing the revised turnaround.

**Fisher** presented details of the turnaround and "right of way" modifications as requested by the Fire Chief.

**MacClinchy** noted that all town staff should have an opportunity to review the final plan.

**Fisher** agreed.

There being no further questions from Board members regarding this agenda item, **MacClinchy** opened the meeting for public comment.

Kristen **Gould**, Resident, Emmons Road expressed concern regarding the following issues:

- Overdevelopment of rural areas;
- Flooding of Emmons Road from Ward Brook;
- Poorly drained soil on the Lots under consideration;
- Development compromising soil absorption of seasonal rainfall; and
- The proposed roadway will border a flood zone and cross a Resource Protection District.

**Gould** asked the following questions:

- Can assurance be given that the development will not alter the quality or flow of Ward Brook?

- Do proposed Lots "C" & "D" fall within conformance as "Lots of Record" as required by the Zoning Ordinance Article 8, Section 1 of the Resource Protection District?
- Were the Lots divided prior to the Resource Protection Ordinance being enacted?

**Bernstein** replied that **Fisher** indicated the **LaBonte** Lots were revised prior to construction of the houses. She added that they are not building in the Resource Protection Zone; therefore the Lots can be revised.

**Gould** asked for the definition of "Lot of Record".

**Bernstein** read the definition from Article 7, Special Exceptions, Item (8) (b) of the Zoning Ordinance.

**Gould** asked why the Board didn't seem to be concerned about a roadway crossing a Resource Protection Zone

Reviewing Article 7, Special Exceptions, Item (8) of the Zoning Ordinance, **Bernstein** read selected items that refer to building in a Resource Protection Zone. She added that the Board will also have to consider, as part of their Findings of Fact, whether all the standards of Article 10, Section 3, "Roads, Driveways, and Parking Areas" have been met prior to granting approval.

**Fisher** added that the applicant must adhere to DNS [?] standards for "Erosion, Sedimentation Control" during construction of the road.

There being no further questions from the public regarding this agenda item, **MacClinchy** asked the Board members if they had any further comment.

**Metcalf** asked for clarification of "RP" and "RC" zone boundary lines on the plan.

**Fisher** explained:

- All the underlying zones depicted on the plan are from the municipal maps and may not be absolute;
- The data used to determine boundaries was 40 years old; and
- The new maps will self correct based on more accurate satellite data.

**MacClinchy** noted that the label "Driveway", used in the title, is incorrect and should be changed to "Private Roadway".

**Fisher** agreed.

**Randall** asked the following questions regarding the bridge on the private drive named "Kelley Lane":

- Has water ever gotten high enough to cover the bridge roadway?
  - Response: Yes.
- How wide is the bridge?
  - Response: 22 feet.

**Vance** asked if the weight rating of the bridge was adequate enough for a fire engine to cross.

**Fisher** replied that he did not have that information.

**Metcalf** asked when the bridge was built.

"The bridge was built in 1999" was given as the response.

**Metcalf** asked if the bridge application came through Planning Board review.

**Bernstein** replied in the affirmative.

In anticipation of continuing this agenda item for another meeting, **MacClinchy** continued the Public Hearing until next meeting, 01/25/16.

Referring to confusion over abutters names listed on the plan, Richard **Smith** asked **Bernstein** if the correct abutter list was used to notify adjoining property owners.

**Bernstein** replied that she did not have that information at the meeting.

**MacClinchy** suggested checking the list after the meeting and informing the Board of the results.

Referring to the question raised by **Gould**, **Metcalf** recommended verifying that the parcel is in fact a "Lot of Record".

**MacClinchy** agreed and noted that the results should be forwarded to the Board.

**Bernstein** asked if net Lot area calculations are on the plan.

**Fisher** replied in the affirmative, noting that the data is contained in the squares on the Lots.

**Randall** asked if the setbacks are indicated on the plan.

**Fisher** replied that they are reflected graphically.

**Metcalf** recommended adding setbacks numerically to the plan.

**Fisher** agreed.

Regarding conditions for approval that were raised at this meeting, **Fisher** provided the following summary:

- A road maintenance agreement;
- DEP permit;
- Update the names of the current Lot owners;
- The term "Driveway" will change to "Roadway" in the Title of the Plan; and
- Setbacks will be shown numerically as well as graphically.

**Metcalf** added 'Town Fire Chief sign off' to the revised plan.

**Fisher** agreed.

Richard **Smith** added '[needed] confirmation that the bridge is rated for the weight of a fire truck'.

**Fisher** agreed.

**MacClinchy** added 'Open Space Criteria from the regulation added to the plan'

**Fisher** agreed.

**Randall** added the fact that the generically worded easement legally exist, should be added to the plan details. He asked for additional notation regarding the easements.

**Fisher** agreed.

A discussion developed regarding scheduling for the next hearing on this agenda item.

Agreement was reached that a revised package submittal will be due to Planning no later than January 19, 2016 for a meeting date of January 25, 2016.

**MacClinchy** thanked the applicant and moved back to agenda item #2.

## 2. Approval of Minutes of Previous Meeting

- **October 26, 2015**
- **November 23, 2015**

**MacClinchy** asked the Board to consider the minutes of October 26, 2015 and began a page review.

Page 1

**Metcalf** submitted the following correction:

- Item #3, left gutter: "Sebego T" should read "Sebago Technics".

Page 5

**Metcalf** submitted the following correction:

- End of the 3<sup>rd</sup> line below R. Metcalf that begins with "it varies ...: delete the number "5".

Page 7

**Metcalf** submitted the following correction:

- First line: "Independence Park can in" should read "Independence Park came in".

Page 8

**MacClinchy** submitted the following correction:

- Last sentence: "would be interested" should read "would be interesting".

Page 24

**MacClinchy** submitted the following correction:

- The Conditions of Approval Decision signature block should be dated **October 26, 2015**.

**Bernstein** submitted the following correction:

- Remove the "by" line for signatures.

Page 25

**Bernstein** submitted the following correction:

- First sentence revised to read: "**application be approved to permit 765 square feet of wetland impact**".

**MacClinchy** asked for a motion.

**A motion was made to accept the minutes of October 26, 2015 as amended.**

**MOVED: Metcalf**

**SECONDED: Richard Smith**

**DISCUSSION: None.**

**MODS: As amended.**

**VOTE: 5 for, 0 opposed; the motion carried.**

**MacClinchy** asked the Board to consider the minutes of November 23, 2015 and began a page review.

Page 1

**Vance** submitted the following correction:

- Item #3, 1<sup>st</sup> paragraph, line 4: "will be approximately 23,000 sq. ft." should read "will be approximately **23,000 sq. ft.**"
- Item #3, 1<sup>st</sup> paragraph, line 6: "and both I meet" should read "and both **Lots** meet".
- Item #3, 2<sup>nd</sup> paragraph, line 2: "The mail Lot will" should read "The **main** Lot will".

Page 2

**Vance** submitted the following correction:

- Item #3, 1<sup>st</sup> paragraph, line 7: "may have the trees were diseased" should read "may have **trees [that] are diseased**".

**MacClinchy** submitted the following correction:

- Item #3, 1<sup>st</sup> paragraph, line 4: "building is well from that back set-back" should read "building is **well back from the rear set-back**".

**Randall** submitted the following correction:

- Item #3, 6<sup>th</sup> paragraph, line 1: "original subdivision was" should read "original subdivision was<sub>2</sub>".

Page 9

**MacClinchy** submitted the following correction:

- Item 17 comments should be moved to item 15 and item 15 should be checked as "met".

Page 15

**Jean** submitted the following correction:

- Item #4, 1<sup>st</sup> paragraph, line 5: "they were to following the 100 ft. setback" should read "they were to follow the 100 ft. setback".

Page 17

**MacClinchy** submitted the following correction:

- Item #4, 5<sup>th</sup> paragraph, line 5: "create a new for a Dock Agreement" should read "create a need for a Dock Agreement".
- Item #4, last paragraph, line 1: "storage on the line" should read "storage on the land".

Page 18

**Jean** submitted the following correction:

- Item #4, 3<sup>th</sup> paragraph, line 1: "driving the 6X6 timbers till refusal" should read "driving the 6X6 timbers until refusal".

**MacClinchy** submitted the following correction:

- Item #4, first paragraph, line 1: "Board will need to language" should read "Board will need to see language".
- Item #4, 2<sup>nd</sup> paragraph, line 3: "that it is comment to shorten" should read "that it is common to shorten".

Page 29

**Metcalf** submitted the following correction:

- The Conditions of Approval Decision date block should be November 23, 2015.

Page 33

**Randall** submitted the following correction:

- Item #6, 3<sup>th</sup> paragraph, line 2: "building on the fire land" should read "building on the fire lane."

**MacClinchy** submitted the following correction:

- Item #6, 2<sup>nd</sup> last paragraph, line 1: "wanted to an internal circulation" should read "wanted to see an internal circulation".

Page 35

**MacClinchy** submitted the following correction:

- Item #7, last paragraph, line 2: CONDITIONS: # 2 should contain the condition statement from Page 43, Item B. Article 11, Section 8, # 2. "The wood stockade fence ...

Page 38

**Vance** submitted the following correction:

- Item # 8 should be checked as "met".

Page 46

**Bernstein** submitted the following correction:

- Item #7, 2<sup>nd</sup> paragraph, line 3: "The abutters want" should read "The abutters want."

Page 47

Richard **Smith** submitted the following correction:

- Item #7, 1<sup>st</sup> paragraph, line 7: "Dan Higgins is new sub-division" should read "Dan Higgins is proposing a new sub-division"

**MacClinchy** asked for a motion.

**A motion was made to accept the minutes of November 23, 2015 as amended.**

**MOVED: Metcalf**

**SECONDED: Richard Smith**

**DISCUSSION: Due to the absence of Board members Metcalf and Jean at the November 23, 2015 meeting, MacClinchy appointed alternate Vance as a voting member for this motion.**

**MODS: As amended.**

**VOTE: 4 for, 0 opposed; the motion carried.**

**MacClinchy** opened a discussion regarding the format of meeting minutes, highlights included:

- The larger text is an improvement; and
- Identification of who asked the question, not just who responded, should be indicated in future minutes.

**Bernstein** distributed a letter from Sebago Technics (provided as Enclosure (2), which is incorporated, by reference, into these minutes) requesting the Board re-sign the recording plats of application: Third Amended Subdivision Plan ( Revised ) / Independence Business Park Independence Drive, Kennebunk, ME.

**MacClinchy** read the letter contents to the Board.

**Bernstein** stated that the Amendment Note now reads:

*"Approval of the third amended condominium plan and site plan for units "C" and "D" include all 17 plan sheets last revised December 14, 2015."*

**Bernstein** recommended adding the following usual note put on all plans:

*"All information documents included with plans are made part of and are a condition of plan approval."*

**Metcalf** recommended assembling a set of standard notes that have to be applied to every subdivision application that comes before the Board.

**Bernstein** agreed.

A discussion developed regarding the request for the Board to re-sign the recording plats of the Independence Business Park Amended Subdivision Plan application, highlights included:

- Because the unit letters ("C" & "D") and the note are slightly different, it is considered a new plan which will require a vote and signing using today's date (**Bernstein**);
- In addition to the changes that Sebago Technics is requesting, the Board should add the changes that it deems necessary (**Richard Smith**);
- This change is not large enough to require another Board review (**Metcalf**);
- "Any additional plan changes need to be reviewed by the Planning Board" could be included as a condition of approval (**Bernstein**);
- Board members present at the initial hearing (**MacClinchy**, **Richard Smith**, **Randall**, and **Vance**) should be the voting members for this change (**MacClinchy**);
- The Town Attorney confirmed that the issue does not have to appear on the agenda in order for the Board to take a vote (**Bernstein**); and
- The changed plan sheets are #2 and #3 (**Bernstein**).

A motion was made to approve the amended recorded plots for Third Amended Subdivision Plan (Revised) / Independence Business Park which re-indentifies Unit "C" of the condominium to be the hotel and Unit "D" to be the restaurant with the condition that the Town Planner receives written sign off from the Town Attorney that the Planning Board can make this vote without having a notice on the agenda.

MOVED: MacClinchy

SECONDED: Richard Smith

DISCUSSION: Randall reconfirmed that a signoff from the Town Attorney should contain a reference that changing the lot number designations without agenda notice is legal.

Metcalfe suggested that the applicant mislabeled the plan with what had been originally established on the Contract Zone.

MODS: None.

VOTE: 4 for, 0 opposed, 1 abstain (Metcalfe); the motion carried.

MacClinchy moved ahead to agenda item #5.

## 5. Other Old/New Business

### b) List of zoning amendments needed and/or in process of being drafted

**Bernstein** summarized her list of amendments collected over the past few months as follows:

- Clarify the definition of "Eating Place" when it is a principal use versus accessory use; and
- Clarify the standard for meeting the "public benefit requirement" under a Contract Zone.

A discussion developed regarding the "public benefit requirement" under a Contract Zone, highlights included;

- A check list might be developed (**Randall**);
- Review of past "Public Benefit" determinations (**Bernstein**);
- The Board's focus doesn't go beyond health, safety, and welfare (**Jean**);
- The focus could also be an economic benefit, i.e. workforce jobs (**Metcalfe**);

Continuing her summary, **Bernstein** added the following to her list of collected amendments:

- Portland Road Mixed Use Zone;
- Clarification of how Subdivision Open Space Standards conform to conventional zoning;
- Clarification of the terms "Drive through" versus "Sit down"; and
- Clarification of "keeping of horses" regarding number of animals allowed per acre and maximum allowed per parcel.

### b) Upcoming Agendas January

**Bernstein** reported the upcoming agenda as follows:

- January 25, 2016: Public Hearing - 6 Longview Terrace Subdivision Plan Revision;
- January 16, 2016: Site Walk - 6 Longview Terrace Subdivision Plan Revision; and
- February 2016, Final Subdivision Plan - Erinmore, Boothby Road.

A discussion developed regarding landscaping changes at Biddeford Saving Bank on Portland Road. The landscaper was advised to assemble enough information for a Board presentation.

**6. Adjournment**

**MacClinchy** asked for a motion to adjourn.

**A motion was made to adjourn the meeting at 10:17 p.m.**

**MOVED: Richard Smith**  
**SECONDED: Randall**  
**DISCUSSION: None**  
**VOTE: 5 in favor, 0 opposed; the motion carried.**

**Signature Page:**

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Signature

Date

Enclosures:

1. **Demers** email to **Bernstein** of Jan 11, 2016, Subj: Kyle Noel Well separation question
2. Sebago Technics Ltr. of January 11, 2016 to Judy **Bernstein**, Town Planner

## **Judy Bernstein**

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**From:** Paul Demers  
**Sent:** Monday, January 11, 2016 4:33 PM  
**To:** Judy Bernstein  
**Subject:** Kyle Noel Well separation question

Good afternoon Judy,

The information provided by Matt Logan is correct with the understanding that the LPI (me) may grant the reduction in setbacks as presented. This is not a Variance as long as the conditions noted are met. After a discussion with the State Plumbing Inspector we agreed that the well casing depth should be verified by a well driller to be sure the condition is met.

I am happy to address this at the time of a building/septic permit request or you may make that a condition of your approval. I would not hold up a final approval at the Planning Board level as this is something we can do as this moves to the next phase.

I hope this will assist you to move forward on this request.

Regards,

Paul A. Demers, CEO/LPI

Sorry for the late response, I just connected with Brent Lawson this afternoon at 4.



January 11, 2016  
15112

Judy Bernstein, Town Planner  
Kennebunk Planning Board  
Town of Kennebunk  
One Summer Street  
Kennebunk, ME 04043

**Third Amended Subdivision Plan ( Revised ) / Independence Business Park  
Independence Drive, Kennebunk, ME**

Dear Judy and Members of the Board:

On behalf of Kennebunk Port Hotel, we are requesting that the recording plats be re-signed by the Planning Board at its January 11, 2016 meeting . As you may recall, the proposed restaurant was identified on the plat as Unit C of the condominium, and the proposed hotel was identified as Unit D.

We then discovered that all of the applicant's condominium documents referred to the hotel as Unit C and the restaurant as Unit D. We have revised the plats accordingly, and have modified the conditions of approval. This is reflected in the last part of the Amendment Note , as is the information Natalie Burns has requested.

Sincerely,

SEBAGO TECHNICS, INC.

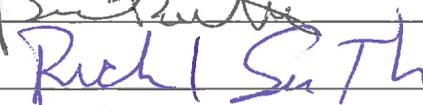
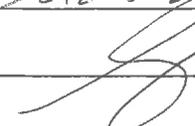
A handwritten signature in black ink that reads "William T. Conway".

William T. Conway, R.L.A.  
Vice President, Landscape Architecture

WTC:llg  
Enc.

cc: Greg Patterson, Kennebunk Port Hotel, LLC

Signature Page:

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	2/22/16
	2/22/14

Signature

Date

Enclosures:

1. Demers email to Bernstein of Jan 11, 2016, Subj: Kyle Noel Well separation question
2. Sebago Technics Ltr. of January 11, 2016 to Judy Bernstein, Town Planner