

**NORTH BERWICK, ME 03906**

**MINUTES OF PLANNING BOARD MAY 12, 2016**

**Present:** Rick Reynolds, Barry Chase, Anne Whitten, Jon Morse, Matthew Qualls, James Allaire, CEO

**Absent:** Chairman Geoffrey Aleva

**Also Present:** Lee Jay Feldman from SMPDC, Lorinda Hilton, Shirley Barto, Gary Beers, Joe Carr, Dennis Brown, Tom Harmon

1. Call To Order:

Vice Chairman Rick Reynolds will be the Acting Chairman for tonight. He called the meeting to order at 6:30 pm.

2. Review Previous Minutes:

Rick Reynolds stated that on Page 2 on the 22<sup>nd</sup> line, the words "down town" should be one combined and be the one word "downtown".

Jon Morse motioned to approve the minutes of May 12, 2016 as amended. Barry Chase seconded the motion. VOTE: 4-0 Abstain: 1

Vice Chairman Reynolds moved Matthew Qualls to a full voting status.

3. Current Business:

3.1 Preliminary review Country Estates Mobile Home Park – The applicant is proposing a 39 lot over 55 mobile home park located on High Street. Planning Board to establish escrow, Public Hearing date and site walk (if necessary). (Tax Map 04 Lot 44, 47, 46 and 44-1)

Tom Harmon from Civil Consultants stepped forward to discuss the project. He introduced Dennis Brown and Joe Carr who are the applicants for the project. Also present is Gary Beers, who is from Kittery and has extensive experience with mobile home parks and is a consultant for this project.

Mr. Harmon stated that he was not going to go through the whole application because it was quite extensive and the Board members had a copy of it anyway. They are asking for a few

things as an exception. They want to bring the septic system and the hydrogeological reports in on the final phase instead of in the preliminary phase because it is a great deal of work. As they go through the application tonight, there may be some issues in these areas that will need to be discussed.

The project is a 39 unit mobile home park located on Route 4 north of Oak Woods Road. There is currently a residence on the right of way going in to the property. They are proposing to improve this right of way and install approximately 3500 feet of roadway which would encompass 600 feet of the existing right of way. They will have underground electric. They have been in discussions with the North Berwick Water District and they will be providing public water. The developer will install the water line to their specifications and then the Water District will take over these water lines and operate them. There will be separate meters for each unit. The project does not need to go to the Department of Environmental Protection for site location but it does need to go to them for storm water. They do have a storm water application completed but it has not gone to the DEP at this time because there are a few things that need to be answered on it first.

Mr. Harmon stated that they would like to have an approval for them to work in some sections because of our growth limits. They would probably start with 6 units with the first small septic section that they have listed as a smaller individual septic system. In the next phase, they would do the rest of the road, water lines and the larger septic system. He stated that the Board had the boundary survey plans in their packet. They have detailed the road, the road profile, the grading, and the storm water basins. They show where the utilities are on the streets and what each lot looks like.

Mr. Harmon stated that, in the last couple of days, they have run into a little bit of a snag. On the current plans, they have the septic system down slope from the mobile home park and it is in a different Zoning district. They are allowed to go into the other zone by 50 feet for the mobile home park but the septic system and some of their storm water treatment system are further than that into the other zone. When they began the process, they took a look at soils map and topography to figure out the best way to do things. They asked the previous code enforcement officer if they could do this and put the septic system in another zone. Mr. Harmon stated that the CEO had checked into it and said that it would be okay so they proceeded with the design of the septic system and the hydrogeological report with the septic system that is in the plans. It goes into the other zone for about 300 feet. That septic system allows a gravity sewer system and it is backed up against a wetland where there won't be any other development. He said that they had the preliminary hydrogeological report done but they stopped them from doing the final one until this gets figured out. He did state however that they said that this would be the optimum site for the septic system. He stated that the Town Manager came to them and told them that he didn't believe that they could have the septic system in that other zone because mobile home parks are not allowed in that zone. Mr. Harmon stated that when they looked at our Zoning Ordinance, it states that sewage treatment systems, public, semi-public and private are

allowed in that zone. With this and when the other CEO told them it would be okay, they went ahead and put the septic system there. Mr. Harmon said that if they have to move it, they believe that it will now have to be a pump system. When they put the sewer lines in the street, they have to have separation between the water and the sewer lines. Sewer lines normally have to be below the water lines. The water line here in North Berwick will have to have 4 ½ feet of cover so they will need to be down at least 6 feet in the street with the sewer lines. Mr. Harmon stated that any place in the zone that allows mobile home parks, he cannot get the sewer there by gravity so this will need to turn into a pump system which add a lot to the cost of the project. He said that he is looking at getting some ideas tonight to see if they could continue with the plan that they currently have with the septic system. He stated that they do want to follow zoning and they have not talked too much about what options they have to leave it in the current spot. He stated that it is far away from other properties or surrounding wells.

Lee Jay Feldman stated that the way that the Ordinance is established, in Village A & B zones mobile home parks are not allowed. They are allowed in a Residential zone. The majority of the park is located in the Residential zone. Mr. Feldman stated that mobile home parks are described as being a unified development or piece of property. This is where the issue is. Mr. Feldman stated that the way that accessory uses are set up, they are accessory uses to the permitted use. In this case, this use is not permitted. He stated that this is how he interpreted the Ordinance and when he spoke to Dwayne Morin about it, he concurred. He stated that it is really the Planning Board's decision. He said that it is his interpretation of the issue, not only for the septic system but there are a couple of outfalls and storm water ponds that are an issue as well.

Lee Jay stated that regarding other ideas, they need to find a way to pull those outfalls and storm water ponds back. As far as the septic system, they do have the 50 foot gap and he is wondering if soils wise, they could put it underneath the rec field and pull it back into that side of the zone. Tom Harmon stated that there was a couple problems with that. One was gravity and the other is that the storm water fields need to have separation and once they move it up there they would not have separation for the storm water. Lee Jay stated that this would be the only alternative for the applicant. He said that this is his interpretation of the code and that the applicant could always appeal it to the Zoning Board of Appeals and let them make a decision. This would mean another meeting, another Board and more time. Mr. Feldman stated that it wasn't his job to design it but he thinks that Mr. Harmon and his team need to find a way to work out these issues. Lee Jay stated that he had reviewed other aspects of the project but doesn't feel that they should get into it until the zoning issue is resolved.

Tom Harmon asked Lee Jay if they would be able to put the septic system under a different entity. Lee Jay stated that the problem is that the use is not allowed. The way the Ordinance is set up, a mobile home park has to be a unified development and the problem is that mobile home parks or its accessory uses are not allowed in Village A & B. Barry Chase stated that if the applicant created their own semi-public sewage disposal system it would be allowed in Village B. Anne Whitten asked how they can make it a public system when it is attached to a private home development. Barry Chase stated that it doesn't say that it has to be public. He stated that

it reads, "Utilities including sewage collection and treatment facilities and essential services." and that it is a "CU". Lee Jay said that he and Dwayne had talked this afternoon and discussed this as an alternate but they came to the conclusion that it does not fit into this scenario. Lee Jay said that he thinks they should probably ask the Town attorney to see what their interpretation would be.

Matthew Qualls stated that Village B is made for less residential and less people than in Village A. He stated that it would be even more restrictive. He does not think that you could put the septic system on the Village B zone. He does see the septic system as being part of the mobile home park and not something separate. Barry Chase believes that the only hang up is that the sewage disposal system is an accessory to the mobile home park which is not allowed in that zone. Mr. Chase believes that the case could be made that a private sewage system is allowed in that zone. Matthew Qualls asked if they had a definition for a private septic system. He wondered if size came into play. Barry was not sure.

Jon Morse stated that he did not personally have any problems with it. He thinks that the way the Ordinance is being read, it could be interpreted both ways. He stated that the land that the septic system would be going on is owned by the same person that is building the park and there is nothing but woods out there, so he thinks that they can get around it.

Barry Chase stated that the definition of a subsurface sewage disposal system was, "any system designed to dispose of waste or waste water on or beneath the surface of the earth; includes, but is not limited to: septic tanks; disposal fields; grandfathered cesspools; holding tanks; pretreatment filter, piping, or any other fixture, mechanism, or apparatus used for those purposes; does not include any discharge system licensed under 38 M.R.S.A. section 414, any surface waste water disposal system, or any municipal or quasi-municipal sewer or waste water treatment systems." He thinks that this would probably fall under another waste water system. Mr. Chase stated that they are not going to be discharging anything so he thinks what he just read has to do with a system that would be discharging. Theirs will just be leeching into the ground.

Jon Morse said that he doesn't understand why they can't call this a private system even though it will be running 33 lots. In his opinion, these are 33 private homes.

Anne Whitten stated that agriculture is allowed in the Residential District but it is not allowed in the Resource Protection, but seasonal plants produced and raised are okay in the Resource Protection. She asked that if she had a farm where it was allowed and she wanted to bring all of her byproducts from all of her farm animals into the Resource Protection so she could sell her plants, then that would be okay? Jon Morse stated that she couldn't pile it up but she could spread it on her flowers and plants. She stated that the Ordinance states that she can't do it. If the trailer park is not allowed in that section, then why should any part of that trailer park be allowed in that district? Jon Morse stated that he is considering it a private system. Anne stated that it was part of that trailer park. It is an accessory and not just a septic system sitting there for

a house all by itself. It is a septic system that is used for that trailer park. It is not used for a building on that land. Jon Morse asked if it was being used for private homes. Lee Jay Feldman stated that the mobile home park is one owner. The people will own their home but they will not own the land.

Acting Chairman Reynolds stated that it is in different zoning and they are only allowed 50 feet into that zone. He stated that this will be a large system and will be very extensive. He stated that they did not have a soil test to show that it will take the volume on that land. Tom Harmon stated that they have completed the soils test report but have not sent it out yet because of this sewage issue. Mr. Harmon did state that the preliminary report does state that this location would be the optimum place. Lee Jay Feldman stated that it is the optimum place for gravity. The applicant could find another place for it but it would require a pump station.

Jon Morse asked if this had been approved and had they designed a system for the 33 lots. Tom Harmon stated that he will be designing the system. He has done the preliminary work and he knows that it will work there. He has had the hydrogeologist go in and review the ground water flows, the nitrogen content and the nitrogen levels that will occur with this system and they have stated that it is the optimum place. Mr. Harmon said that the system would also go to the State for approval.

Gary Beers stated that regarding the Village B use of a private system, he wondered what the distinction would be between doing that and connecting it to the public system. Both are off the site of the property and purchasing service for waste water treatment independent of the mobile home park. Anne Whitten stated that it is because one is an Ordinance and we cannot change the Ordinances. He stated that he had understood that the private system was allowed in Village B and that is why he was asking for the distinction. Jon Morse stated that there doesn't seem to be a distinction. He thinks that they are making up a rule that states that a private system is a one home system where the land is owned by the homeowner. He stated that it doesn't say that but he is wondering if this is what they are trying to say. Anne Whitten stated that it says if they have the trailer park, they can go in 50 feet into the abutting zone, but the septic system would be an additional 240 feet or so.

Matthew Qualls asked Lee Jay Feldman what his opinion was on it being classified as a private sewer system on Village B. Mr. Feldman stated that he wasn't here when the Ordinance was written but he thinks that it was the intent to have a private system for your private home. However, because this is a commercial entity that is a much larger development. This septic system which is going to be larger than handling one home, is an accessory use to the primary use which is the park itself. The way the Ordinance is structured, it doesn't say "accessory use permitted". It says "accessory use to the permitted use" and a mobile home park is not permitted in Village A and B. Therefore, the accessory use that goes with it would not be permitted. Barry Chase stated that he thinks that they can still build a sewage treatment collection separate in that zone. Lee Jay stated that the definition of the mobile home park in the State law and local

law is listed as a “unified development” so they can’t have a separate sewage system. Barry Chase asked how come they can have a separate water system. Lee Jay stated that they are using the town’s water system. They will be running the pipe into the development.

Barry Chase stated that it should be reviewed by the Town attorney and the other members agreed. Lee Jay stated that he would also like the attorney to give her interpretation.

Acting Chairman Reynolds stated that they will not go any further with the review of the application because this issue needs to get worked out first. This will also give the Board members a chance to review all of the paperwork and especially the waivers.

Lee Jay stated that he had started doing the review but did not have a memo done for tonight’s meeting. His conversation and protocol is that he cannot make any recommendations or further review until the escrow is established. Acting Chairman Reynolds stated that the recommendation amount for the escrow was \$19,000. Jon Morse asked Lee Jay Feldman if the figures on the estimate that was given to them were his figures. Mr. Feldman stated that the only figure that came from him was the amount for the SMPDC fee. The figures from Underwood Engineering comes from them and the other numbers are from Dwayne Morin.

Anne Whitten motioned to approve an escrow amount of \$19,000 for Country Estates Mobile Home Park. Matthew Qualls seconded the motion.

Jon Morse asked the applicant if they were okay with the amount. Tom Harmon stated that he would like to see the backup for what the figures included. He stated that the Board can vote and if the applicant has an issue with the amount, they just will not give a check.

VOTE: 5-0

Anne Whitten motioned to have the Town Attorney review the issue with having the septic system located in a different zone. Jon Morse seconded the motion. VOTE: 5-0

Anne Whitten asked the applicant if these were going to be double wide homes. Joe Carr stated that they range from 24 feet wide and anywhere between 54 to 64 feet long. There will be garages attached to them. He stated that they are looking at a higher end style home. He stated that she could look up Ritz Craft Homes and see what they would look like.

Joe Carr asked if the Board wanted to do a site walk. Acting Chairman Reynolds stated that they need to make sure that everything will move forward before they schedule a site walk. He stated that they usually do a preliminary approval first. Barry Chase said that they will want to do a site walk prior to final approval.

3.2 Other Business:

There is no other business at this time.

4. Adjournment:

Barry Chase motioned to adjourn the meeting at 7:21 pm. Anne Whitten seconded the motion.

VOTE: 5-0

James Allaire  
Planning Coordinator

Respectively submitted,  
Susan Niehoff, Stenographer

Chairman Geoffrey Aleva

Barry Chase

Rick Reynolds

Jon Morse

Anne Whitten

Matthew Qualls