

Moultonborough Planning Board
PO Box 139
Moultonborough, NH 03254

Public Meeting Minutes

February 22, 2023

Present: Members: Allen Hoch, Sandra Kelly, Scott Bartlett, Norman Larson,
Brendan Connolly, John Annaian, Kevin Quinlan (Selectmen's Representative)
Excused: Peter Claypoole (Alternate)

Call to Order: Chairman Hoch called the meeting to order at 7:00PM

Pledge of Allegiance: The Pledge of Allegiance was recited, led by Chairman Hoch. The members introduced themselves to the public.

Review/Approval of Minutes from February 8, 2023:

Motion: Mr. Bartlett moved to approve the Planning Board Minutes of February 8, 2023, as posted. Mr. Connolly seconded. Motion carried by all with Mr. Quinlan abstained.

Citizen's Forum: Joe Cormier of Moultonborough Neck Road read a statement regarding SB2, which will be discussed and voted on at the upcoming Town Meeting. He said more information about SB2 will be forthcoming in the weeks, prior to the Town Meeting.

New Submissions: None

Boundary Line Adjustments: None

Hearings:

Continuation of Public Hearing for Koss Construction LLC (140-16 & 170-12) Bean Road - Boundary Line Adjustment, Subdivision (Condominium form of Ownership), Site Plan Review, and Conditional Use Permit.

Mark Koss gave a summary of the project to date, citing the changes they had made to come into line with the Town Ordinances for the West Village Overlay District (WVOD). They had indeed spoken with Bay Sewer District to be assured that there was capacity for the added dwellings.

Mario Focareto of Brown Engineering identified the changes to date on the 1/31/2023 plan set. He added that Ray Korber had reviewed the plans and had identified prior comments still outstanding as of 2/16/2023.

Attorney Ethan Wood, of Normandin, Cheney, & O'Neil, spoke next, saying they are looking for approval of the 42 units to facilitate their work with DES to plan the water system demand and facilitate getting the proper testing done. They could not provide further details. He addressed the challenges of writing Condominium Documents prior to knowing the scope of the proposed development. The documents must be in line with the site plan, so conditioning that upon Site Plan Approval would be acceptable. Also acceptable to them is review by the Town Attorney. Also brought up in discussion was parking spaces per unit, (two per sketches) with overflow/guest parking spaces. The duration of Short Term Rentals was also brought up, citing the goals of a

community-like setting, agreed to be not less than 30 days. The lot merger would naturally follow site plan approval, answering a query by Mr. Larson.

Contamination mitigation was questioned and addressed by Mr. Koss, who stated that could be a condition subsequent, pending the testing by DES of the community wells.

Attorney Mark Rouvalis, of McLane Middleton, representing Bryan and Elaina Murphy, abutters on Bean Road, opined that approval is premature as the Planning Board does not have all the information. The condominium documents require revision. He questioned the density calculations. He stressed the importance of protecting the neighbor's health and welfare. He expressed definitively that the wells have a cone of influence which will present issues of health, safety, and welfare for his clients. He did agree that the Planning Board cannot condition the applicant to provide water to private homes abutting the property.

Attorney Christopher Boldt, of Donahue, Tucker & Ciandella, representing the town of Center Harbor, addressed the well protected radius of the Senters Market, and believes that land should be deducted from the lots in the application, impacting 70% of their property. He cited Section 6.1.5 of the Subdivision Regulations, also commenting that many of the proposed condos have no backyard. He said DES approval should come first and provided an ultimatum from Center Harbor that no police, fire, ambulance, or other municipal service would be available to the residents/occupants of this development. He asked that the statement be placed in the Condominium Documents, with a provision that it cannot be amended. No tree cutting should be done prior to project approval.

Discussion went further regarding the mutual aid between the towns of Center Harbor, Sandwich, and Moultonborough. Mr. Quinlan expressed concern regarding the strong language in the statement.

Mark Taylor, 34 Bean Road, expressed concern, saying the project does not fit the neighborhood, houses too close together and too close to his property.

Carla Taylor, 34 Bean Road, asked that cutting of trees be restricted to 15 feet from her property line, also requesting a bond to protect the wells of the abutters. She handed the chair photos of their back yard as exhibits.

Mark Hildebrand, High Haith Road, addressed his thoughts on the increased traffic impact on Center Harbor and the lack of town services.

Don Carey, 35 Bean Road, commented on the continued lack of affordable housing and Moultonborough, stating we need workers, not more shoppers. This development is not likely to satisfy that need.

Andi Hubbard, 10 Bean Road, addressed her concerns regarding potential well contamination as well as lack of fire and police protection.

Mr. Larson commented that this Center Harbor mandate should perhaps have been discussed long ago between Boards of Selectmen on both towns at the planning stages of the WVOD. How it impacts our decision making today is unclear. Mr. Quinlan responded with data regarding support services in Moultonborough and planned hirings since Sandwich and Center Harbor are not currently hiring additional support services.

Conditional Use Permit

The following Findings of Fact were read into the record by Mr. Bartlett and discussed.

- a) As designed, this is a reasonable request for the applicant's use of his land for the stated purpose.
- b) The total area of Wetland impact for the Box culvert is approximately 448 sf. for dredge and fill.
- c) The Storm water management and mitigation design enhances the absorption on the entire site.
- d) Moultonborough has granted CUPs to allow driveways to cross wetlands on numerous prior applications.
- e) The Con Com found no issue with this request provided best practices are observed.

Mr. Bartlett MOVED to APPROVE the application for **Conditional Use Permit** pursuant to Article 9.1.7.1 for the construction of roads/driveways within the 50-foot Wetlands buffer subject to the following conditions:

1. Construction within the Wetlands buffer shall be limited to improvements presented on the plan entitled "Conditional Use Permit" (CUP 1 of 1), dated 9/28/2021 and site plan dated 1/31/2023.
2. Soil disturbance and other detrimental impact shall be minimized to only that which is necessary for construction and operation.
3. Following construction, the buffer shall be restored as nearly as possible to its pre-disturbance condition.
4. Habitat for rare, threatened, or endangered species, as determined by the NH Natural Heritage Bureau, shall not be disturbed.
5. Applicant shall comply with all conditions of DES AoT approval.

Seconded by Mr. Connolly. Motion carried unanimously.

Application for Condominium Subdivision

These Findings of Fact were also read into the record by Mr. Bartlett and discussed.

- a) Condominium use for this property is a reasonable productive use.
- b) The multi-family use is an approved use in the WVOD (MZO 9.3)
- c) The use supports the goals of our Master Plan for increased housing density.
- d) The public sewer connection to the Bay District Sewer Commission allows increased density.
- e) In establishing the WVOD, the voters of Moultonborough knew that the density would be greater, being four times as dense with connection to Bay District Sewer with 10,000 square feet versus 40,000 square feet.
- f) The setbacks were also reduced from other ordinances to promote greater density.
- g) Besides the Bay District Sewer, there are two association wells, fire protection provided by the cistern system and storm water management plan per the plan set.

Mr. Bartlett MOVED to Approve the revised application for 21 building/42 unit Condominium Subdivision of Lots 140-16 and 170-12, which shall be merged, subject to the following conditions:

Conditions precedent; to be completed prior to signature of condominium plan by the Planning Board Chair:

1. Add the following plan notes/revisions prior to submission of condominium subdivision plan for Planning Board signature.
2. All condominium instruments shall be subject to review and approval by Town Counsel, and any deletions, additions, or revisions recommended by Town Counsel shall be incorporated into the final condominium instruments prior to final Town approval, Planning Board Chair signature, and County recording.
3. All third-party review costs, including legal review shall be paid in full.
4. All required federal, state, and local approvals shall be obtained.
5. Approval is contingent upon the recording of the merger of the two lots.
6. Conditions precedent to be completed by 2/22/2025.

Conditions subsequent; to be continually complied with:

7. All construction phases and permanent drainage structures and stormwater management facilities shall be maintained to perform as represented and intended.
8. All representations made by the applicant and applicant's agent shall be incorporated as a condition of approval.
9. Minimum short-term rentals to be 30 days.

Seconded by Ms. Kelly

Discussion, Mr. Hoch asked that minimum short-term rental would be one month or 30 days. Mr. Bartlett agreed to the amendment, Ms. Kelly also agreed. The motion including the amendment carried unanimously.

Application for Site Plan Review

These Findings of Fact were read into the record by Mr. Bartlett and discussed.

- a) The project supports the goals of our Master Plan for increased housing density in appropriate areas.
- b) Condominium use is a reasonable productive use for the property in this mixed use neighborhood.
- c) This multi-family use is an approved use in the WVOD, as adopted by the voters.
- d) The stormwater management and mitigation design has been verified by a third party engineer.
- e) The Moultonborough Conservation Commission found no issue with this project provided best practices are observed.
- f) The public sewer connection to the Bay Sewer District Commission can support this increased density.
- g) DES will have the final say in the creation and operation of a community water system for this project.

Ms. Kelly MOVED to APPROVE the application for **Site Plan Review** for a multi-family, 42-unit condominium subdivision.

Conditions precedent; to be completed prior to signature of final plans by the Planning Board Chairman:

1. Add the following plan notes/revisions prior to submission of final plan for Planning Board Chair's signature.
 - a. Revise note 16 under Dimensional Standards to 42 units (multiple pages)
 - b. Update phasing notes to reflect new number of units (Sheet 8).
 - c. All conditions subsequent shall be added as plan notes.
 - d. Site density calculations shall be provided on drawing OV-1.
2. All federal, state, and local permits shall be obtained, including necessary approvals for the sewer and water systems.
3. Approval is contingent upon the recording of the merger of the two subject parcels.
4. The applicant, or his successors or assigns, shall file security with the Town of Moultonborough Land Use Office with surety conditions satisfactory in an amount to be determined by the Town's Consultant Engineer to guarantee completion of the utilities and roadway construction for the subdivision namely; the finish course of paving for the street and all stormwater and utility infrastructure, including infrastructure necessary for provision of water, sewer, and electric supply, as well as security to provide for all necessary inspections and tests to be conducted by the Clerk of the Works. Said security shall be in the form of a surety bond issued by a surety company authorized to do business in New Hampshire, cash, or savings bank passbook properly endorsed to the Town, or a Letter of Credit in a form acceptable to the Town. The Planning Board may from time to time, at their discretion, and upon request by the applicant, its successors or assigns, reduce the amount of such security to an amount sufficient to ensure that any and all remaining utility or roadway construction shall be able to be completed by the Town in the event that the developer does not complete the improvements. The security shall be approved by the Planning Board and submitted to the Town of Moultonborough prior to the commencement of any construction activities on the project site.
5. Any remaining recommendations and revisions previously provided by the Town Engineer shall be addressed to the Engineer's satisfaction, and all utility and infrastructure systems shall obtain final approval of the Town Engineer.
6. Conditions precedent to be completed by 2/22/2025.

Conditions subsequent; to be continually complied with:

7. The site developer contractor for the drainage and stormwater protection systems shall meet on-site with the Town's Consultant Engineer prior to commencing any work.
8. All construction shall conform to the Design Standards, Guidelines and Principles of the WVOD Ordinance to include appropriate building construction standards and multi-modal transportation accommodations.
9. All lighting shall comply with the requirements of the Moultonborough Zoning Ordinance Section 6.6.5.
10. Annual stormwater operation and maintenance inspection report shall be submitted to the Land Use Department July 1st annually and shall be an on-going approval of this site plan approval.
11. All construction-phase and permanent drainage structures and stormwater management facilities shall be maintained to perform as represented and intended.
12. Neighboring properties shall be allowed to attach to the community water system at their own expense, provided the system has the capacity to serve the additional properties.

13. Conformance with Plan Work shall conform with the plans entitled, "Site Plan – Harbor Landing (Tax Map 140-16 & 170-12)", prepared by Brown Engineering, dated September 28, 2021, and revised January 31, 2023.

14. Amendments

Any modification to the approved plans and any modification of any condition of this approval, together with previous approvals unless otherwise specified in this decision, must receive the prior approval of the Planning Board, unless deemed insignificant by the Town Planner. In such case the applicant shall submit to the Planner the requested changes who shall seek Board approval of the changes. The applicant will not proceed unless the Planner first provides written approval of the requested insignificant changes.

15. Endorsement of Plan

Following the vote of approval by the Planning Board, the satisfaction of all conditions precedent, and the statutory thirty (30) day appeal period in accordance with RSA 677:15, the Planning Board Chairman shall sign the approved site plan, subject to conditions of this approval. The conditions of approval of this site plan review shall be placed on the final plans, and this decision shall be recorded at the Carroll County Registry of Deeds, in accordance with RSA 676:3 (I), within ninety (90) days of signing of the plans by the Planning Board Chair and prior to any construction commencing.

16. Construction Practices

All construction shall be carried out in accordance with Town of Moultonborough ordinances and the Site Plan Regulations, as well as all other pertinent rules and regulations. Additionally, all staging of materials and equipment shall be on-site, and no equipment or materials not directly used in the construction of the site shall be located on site.

17. Construction Requirements

- a. All construction will occur on site; no construction will occur or be staged within Moultonborough, Center Harbor or State of New Hampshire rights of way.
- b. Any roadways, driveways, or sidewalks damaged during construction shall be restored to their original condition by the Owner at the end of construction.
- c. All construction shall occur between the hours of 6:00 am and 9:00 pm as required by the Town of Moultonborough Unnecessary Noise Ordinance (Section 10.2(6)).
- d. The applicant shall clean construction vehicles before they exit the construction site, and clean and sweep all streets affected by their construction truck traffic as necessary.

18. Site Plan Regulations

The Site shall be constructed in accordance with the requirements of the Site Plan Regulations and any other applicable rules and regulations as affected by this decision.

19. Subdivision Regulations

All construction shall be in accordance with the requirements of the Subdivision Regulations and any other applicable rules and regulations as affected by this decision.

20. Fire Department

All work shall comply with the requirements of the Moultonborough Fire Department as affected by this decision.

21. Office of the Building Inspector

All work shall comply with the requirements of the office of the Moultonborough Building Inspector as affected by this decision.

22. Utilities

Any utility installation shall be reviewed and approved by the Moultonborough Building Inspector prior to the issuance of a Building Permit.

23. Lighting

All lighting shall be in conformance with the Town of Moultonborough Zoning Ordinance and Site Plan Regulations.

24. Flagging of Wetlands

Flagging of the 50-foot buffer shall be required before and during any construction.

25. Wetlands Impacts

- a. Soil disturbance will be minimum necessary for construction and operation through the use of BMPs.
- b. Detrimental impacts will be minimized.
- c. Temporary barriers shall be placed between wetlands and buildings to reduce litter and construction materials from entering wetlands. Barriers to be removed upon completion.
- d. Restoration activities will leave site as nearly as possible in its pre-disturbance condition.
- e. Construction work will not disturb habitat for rare, threatened or endangered species as determined by the NH Natural Heritage Bureau.
- f. All work shall be in conformance with NH DES Permits.

26. Best Management Practices

Applicable industry Best Management Practices shall be employed for all construction activities on the site.

27. Maintenance

A signed Maintenance Agreement shall be submitted to the Land Use Office for acceptance prior to endorsement of the plans. Said Maintenance Agreement shall include schedules for cleaning of all drainage infrastructure and other similar infrastructure maintenance items to ensure their proper functioning and shall include the following:

- a. Refuse removal, ground maintenance and snow removal shall be the responsibility of the applicant.
- b. Winter snow in excess of snow storage areas on the site shall be removed off site.
- c. Paved areas shall be swept at least twice a year to remove sand and debris. Said sand and debris shall be removed off site and properly disposed of.
- d. Where necessary, and in compliance with wetland buffer requirements, vegetation on the site shall be trimmed and maintained to ensure visibility of all signs and to ensure proper functioning of stormwater structures.
- e. Garbage and litter shall be removed in and around wetlands twice a year.
- f. Invasive species shall be removed in and around wetlands twice a year.
- g. Only native species shall be planted per Mr. Koss 1/11/2023.
- h. A schedule for cleaning of catch basins, culverts, and other stormwater infrastructure for the site.

28. Signage

Any proposed signage shall be in compliance with the Town of Moultonborough Zoning Ordinance, Article 5, and shall be reviewed and approved by the Code Enforcement Officer prior to the issuance of the Certificate of Occupancy for the site.

29. E-911 Numbering

The site shall conform with the Town of Moultonborough Building Numbering System Ordinance (Section 20), prior to the issuance of a Certificate of Occupancy for the site.

30. As-Built Plans

As-Built plans, stamped by a NH Licensed Professional Engineer, shall be submitted to the Land Use Department and the Road Agent prior to the issuance of a Certificate of Occupancy for each unit.

31. Testimony and Representation at Public Meetings

All testimony and representations made by the applicant or their representatives during the Public Hearing(s) and Public Meeting(s) shall be incorporated into this approval and are part of the Notice of Decision.

32. Right to Amend Decision

The Planning Board reserves the right to modify or amend this approval on application of the owner, lessee, or mortgagee of the premises, or upon its own motion, as permitted by the Town of Moultonborough Site Plan Regulations, Section 6, and RSA 676:4.

33. Violations

Violations of any condition of this decision shall result in placement of a Stop-Work Order or a Cease and Desist Order, as appropriate, on the property by the Building Inspector and/or the Select Board, unless the violation of such condition is cured within fourteen (14) days or waived by a majority vote of the Select Board. Outstanding violations of the approved plans or conditions of approval may result in the revocation of this approval by the Planning Board under RSA 676:4-a.

34. Legal Fees for Review

The applicant shall pay all legal fees for the review of project documents during the permitting process, as detailed in invoices from the Town's legal counsel prior to the issuance of any residential Building Permits for the site.

35. Clerk of the Works

The services of a consultant to serve as a Clerk of the Works shall be provided by the Town, at the applicant's, or his successor's or assign's, expense, to review the remaining infrastructure work. All previous inspections of infrastructure shall be detailed in written inspection forms and shall be turned in to the Town for the use of the Clerk of the Works prior to any further infrastructure work being done. In the event that the previous inspection reports are not sufficient, the Clerk of the Works may order any necessary tests to be conducted, at the applicant's expense, to verify previous work.

36. Inspections

The developer shall pay all costs associated with periodic on-site inspections by the Town's Consultant Engineer during the construction phase of all drainage and stormwater protection systems prior to any unit being occupied. See RSA 676:4-b, II.

37. Unit Owners Association

All roadway rights-of-way and utility infrastructure shall be owned by the Unit Owners Association for the subdivision. It shall be the responsibility of the Unit Owners Association to maintain these areas and infrastructure. All internal roads will remain private unless accepted as public, and the Town of Moultonborough is not responsible for maintaining these roads.

38. Right to Enter

The Town of Moultonborough, its employees, agents, or representatives shall have the right to enter all common areas for the purpose of providing emergency services, including, but not limited to police, fire, and ambulance service to unit owners and for the purpose of inspection of the installation, maintenance, repair, and replacement of the water supply, sewerage, and drainage systems and any other utilities servicing the condominium, together with the inspection of all structures and other improvements on the land.

39. No Site Work or Logging

No site work or logging can occur until all necessary State and Federal approvals are obtained, including but not limited to DES approval of the two proposed community wells.

40. Condominium Documents should include provision for abutters experiencing new well contamination to tie into the community well for the first seven (7) years of operation of the community well. Expense of this tie-in shall be shared 50/50 between the abutter and the condominium association. A surety in an amount determined by the Town Engineer, shall be maintained for seven (7) years. Community water system shall be designed to serve a minimum of six (6) abutters in addition to all units on site.

Mr. Bartlett seconded the Motion.

Discussion regarding Center Harbor statement being included was entertained and a motion was made to exclude that language by Mr. Larson and seconded by Ms. Kelly.

Vote to exclude passed 5-2 (Quinlan, Annaian voting against).

Vote on the motion to approve Site Plan passed 6-1 (Annaian voting against)

Other Business/Correspondence - none

Committee Reports - none

Project Updates – none

Adjournment: Ms. Kelly made the motion to adjourn. Mr. Bartlett Seconded. The Motion carried unanimously by voice vote, and the meeting adjourned at 10:33 PM.

Respectfully Submitted,
Sandra Kelly
Vice Chairman