

MINUTES
FREEPORT PROJECT REVIEW BOARD
FREEPORT TOWN HALL COUNCIL CHAMBERS
WEDNESDAY, MAY 15, 2019
6:00 p.m.

PRESENT: Geralyn Campanelli (Chair) Gordon Hamlin, Ford Reiche, Adam Troidl, Suzanne Watson, Drew Wing and Caroline Pelletier (staff person)
EXCUSED: Guy Blanchard

CALL TO ORDER: Chair Campanelli called the meeting to order at 6:06 p.m. and noted that Mr. Blanchard is excused this evening.

ITEM I: Informational Exchange

- a) Signing of the mylar for the previously approved lot line amendment at the Arrowhead Ridge Road Subdivision and possibly another will be ready tonight.
Chair Campanelli noted that the mylars will be signed at the end of this meeting.
- b) Update on Staff Approvals. Ms. Pelletier explained that there are two handouts in front of the Board tonight. One pertains to the Fletcher Property Group Subdivision and one is pertaining to Casco Bay Ford. For the public, there are copies on the side table.
Ms. Pelletier pointed out that there has been a sign relocation for Dube's Music which was on Main Street and now is on Route One South and was signed off at the Staff level for Staff Approval. A sign replacement for R. D. Allen Jewelers on Middle Street was approved. Norway Savings Bank is hoping to remove a clump of old, unhealthy red pines and will put in some replacement landscaping. The Board will most likely see a project come back for reapproval in the next month or so from Maguire Construction for a new building on U.S. Route One South. They did satisfy the condition with the Town Engineer signing off. Ms. Pelletier explained that she has been contacted by L.L. Bean and they would like to come to the Board in June for their Casco Street facility on Lower Main Street. She asked for the Board's thoughts on holding a site walk before the June meeting. Mr. Wing explained that he has a conflict of interest and would be recusing himself from that project. The Board agreed to meet at 5 p.m. on June 19 and will meet at the Public Safety Building and walk on the sidewalk over the overpass to view the campus from the road. Abutters will be notified and are welcome to attend.

ITEM II: Approval of the minutes from the April 10, 2019 Project Review Board meeting.

MOVED AND SECONDED: To accept the Minutes from the April 10, 2019 Project Review Board meeting. (Hamlin & Watson) **VOTE:** (4 Ayes) (3 Excused-Blanchard, Reiche & Wing) (0 Nays)

Chair Campanelli mentioned an issue that was brought up by Granite Farms homeowners regarding the public hearing notices. We do have two tonight. She asked Ms. Pelletier to explain the history on how the hearings are noticed. Ms. Pelletier explained that the hearings are advertised in the *Brunswick Times Record* in the legal section. The notices for tonight's hearings were run on May 6 and May 13.

Sean Cronin, an abutter to the Young's development, pointed out that it might be time to change from the *Brunswick Times Record* to *The Forecaster* as a means to communicate with Freeport residents. Board members did not indicate any issue with the public notice.

ITEM III: Reviews

Casco Bay Ford – Temporary Activity Permit

The applicant is seeking approval of a Temporary Activity Permit for their property on US Route One. The request is to allow vehicles to be parked in an existing gravel area through 09/30/19. Zoning District: Commercial I (C-I). Tax Assessor Map 25, portion of Lot 2. CF Cousins River, LLC, applicant and owner.

Ms. Pelletier noted the Board has a note from the applicant indicating he is unable to be here but he sent a representative from Casco Bay Ford. She explained that this is a site that had temporary activity approvals in the past to have parking in an existing gravel parking lot. They recently got site plan approval from the Board to work on development of the site. In the meantime, they are seeking approval to be able to park some vehicles there. They propose an end date of September 30. The Staff Report did reference the standards for Temporary Activity and they are more limited than what the Board is accustomed to. There were a couple of concerns raised by staff. First, because it is a temporary activity for more than three weeks, it requires approval by the Codes Officer but the Board also needs to concur with that approval. The Police Chief noted it is a high traffic location and she recommends a condition that they cannot unload vehicles from the transport truck in the right-of-way. That comment was seconded by Earl Gibson, Superintendent of Public Works and he also wanted to note that they need to keep that public road clear of any mud coming from that site. The Board has a draft motion with those conditions. Another thing suggested in that proposed motion is that once the approval expires on September 30, 2019, the activity will need to cease unless the applicant comes back to the Board and asks for an extension before that. Otherwise, there are no outstanding items with the application.

Chair Campanelli mentioned that Mike Cianchette cannot be here tonight but John Litwinetz is here. The Board did not voice any questions. Mr. Reiche noted that the Board is acquainted with the site.

MOVED AND SECONDED: To approve the motion as written and read by Staff with the conditions as stated. (Reiche & Hamlin). **VOTE:** (6 Ayes) (1 Excused-Blanchard) (0 Nays)

Be it ordered that the Freeport Project Review Board concurs with the Freeport Codes Enforcement Officer regarding the request by CF Cousins River LLC for the issuance of a Temporary Activity Permit for the parking of vehicles in the gravel parking area on their property on U.S. Route One (Tax Assessor Map 25, portion of Lot 2), application dated 24 April 2019, as the Board finds that the standards of Section 501 of the Freeport Zoning Ordinance have been met, with the following conditions of approval:

1. There be no unloading of the vehicle transport truck in the right-of-way.
2. The public right-of-way must be kept clear of mud.
3. Upon expiration of the Permit on 09/30/19, the activity must be immediately discontinued or brought into conformance with the minimum standards of performance or be in violation of the Freeport Zoning Ordinance.

Freeport Heights Retirement Community – Old County Road – PUBLIC HEARING

The applicant is seeking an extension of a previous approval for a retirement community on Old County Road. The proposal includes adding an 85-unit assisted living/independent care facility and 73 cottage units to the existing facilities. An updated phasing plan is proposed. This project requires both Subdivision and Site Plan Review. The location of the Retirement Community Overlay District was previously approved by the Freeport Town Council. Tax Assessor Map 26, Lots 38A, 38B, & 38C. Freeport Heights, LLC applicant; Freeport Convalescent Center Realty Trust & Old County Road Realty Trust, owners; Thomas Emery, ASLA, Harriman Associates, representative.

Ms. Pelletier introduced this project that has been going on in some fashion since she began back in 2002. There were many steps and different processes to go through. They are here today because it is a subdivision. It is a large project and had a phasing plan. For the Subdivision Ordinance, if they were going to phase it, each phase is good for two years from the start. They are approaching that deadline of the two-year expiration. The Ordinance does say that prior to expiration, if they want to seek an extension of the approval, they can do it in writing. The Board has a request for an extension of that approval that would push everything out two years. The large project has over 180 units of various types and there were a lot of conditions associated with it. The Draft Motion would still reference the previous findings and conditions. They still have a valid DEP Site Location Permit. She set this up as a public hearing. It is a debatable one. It is an application for a strict extension but at the same time it is a subdivision and the Ordinance does require a public hearing so she advertised it as such. They are not proposing any changes and there have not been any Ordinance changes made in the last two years that would impact the application. Staff does not have any items of concern with the application.

Chair Campanelli asked how long this can be renewed. There does not appear to be a time limit on it and she feels there should be a limit at some point and is something that can be looked at down the road. Ms. Pelletier advised that there is no ordinance provision currently on how many times an applicant can come back and request an extension. Sometimes standards do change and this is an application that previously when they came back, the standards had changed and they had to omit a unit or two. When we get our new staff in place, we might be taking a look at updating some sections of these ordinances and if the Board feels it is appropriate, we can take that comment to the Planning Board. Right now, we don't have that provision in place. If they come back in two years, they will have to meet whatever standards we have in place.

MOVED AND SECONDED: To open the Public Hearing. (Troidl & Wing) **VOTE:** (6 Ayes)
(1 Excused-Blanchard) (0 Nays)

There were no public comments provided.

MOVED AND SECONDED: To close the Public Hearing. (Troidl & Reiche) **VOTE:** (6 Ayes)
(1 Excused-Blanchard) (0 Nays)

Craig Coffin thanked the Chair and Board members for considering the extension of the previously approved Site Plan and Subdivision approvals for the proposed Freeport Heights Retirement Community. They are not making any changes to the permits that exist today. They are only looking for a two-year extension. They are looking for additional time because of the development costs involved. They have gone through two phases of pricing and are now looking into value engineering. He explained that Tom Emery of Harriman Associates is here to answer questions regarding this site.

Mr. Wing asked if there are pieces of the Retirement Overlay District's strict standards that make this a more difficult project to start and if there was some flexibility with that, would it be helpful. Mr. Coffin noted they have six different phases so they do have the ability to phase in the cost. He feels they have it planned pretty well for phasing purposes to try to control the costs. Tom Emery, licensed landscape architect, advised that the DEP permit is good for four more years.

MOVED AND SECONDED: To approve the proposed motion for the Freeport Heights Retirement Community as written and read. (Wing & Hamlin) **VOTE:** (6 Ayes)
(1 Excused-Blanchard) (0 Nays)

Be it ordered that the Freeport Project Review Board grant an extension of the previously approved Site Plan and Subdivision approvals for the proposed Freeport Heights Retirement Community on Old County Road (Tax Assessor Map 26, Los 38A, 38B, and 38C), to be built substantially as proposed, updated subdivision recording plan dated 04/18/2019, finding that no municipal ordinances affecting the approvals have changed and therefore the application would still meet the standards of the Freeport Subdivision Ordinance and the Freeport Zoning Ordinance, with the following Conditions of Approval:

- 1) This approval incorporates by reference all supporting plans that amend the previously approved plans submitted by the applicant and his/her representatives at Project Review Board meetings and hearings on the subject application to the extent that they are not in conflict with other stated conditions.
- 2) The Findings of Fact and conditions of approval related to the Board's 06-28-17 approvals are still applicable with the exception of condition 2 which is updated as follows:
 - a. The Board approves the phases as presented by the applicant in the submission cover letter dated April 18, 2019, and each phase is approved for the time as noted. Construction of the first phase must be initiated (as defined by the Freeport Subdivision Ordinance) within two years of this approval (by March 15, 2021). The Construction Phasing Plan is approved for the construction of all site work, including the driveway, roads, parking areas, landscaping, erosion control, and stormwater management etc. The buildings do not need to be completed within this phasing schedule.

The commencement date for the start of a subsequent phase under the phasing schedule may be extended by the Project Review Board. Phasing may be accelerated if the required performance guarantee has been established for each separate phase under construction and if applicable fees will be paid, but such acceleration shall not alter the beginning and end date for commencement of other subsequent phases, unless requested by the applicant in accordance with this approval.

If a construction of a phase is not initiated in the time allotted, the approval for all remaining phases becomes void unless otherwise approved by the Project Review Board prior to expiration of such phase. If during such time prior to construction, rules and regulations of the State or other governing body besides the Town change and require changes to the plan, the applicant may be required to return to the Town for approval of such changes. If Town standards affecting the plan change, those standards will be applicable at such time that the applicant returns to the Board.

Pine Tree Academy – 67 Pownal Road

The applicant is presenting plans for a Site Plan Amendment to construct a 36' X 60' pole barn structure which will be used for storage. No other changes are proposed. Zoning District: Rural Residential I. Tax Assessor Map 22, Lot 74. Pine Tree Academy, applicant; Northern New England Conference of Seventh Day Adventists, Inc, owner; Brendan Krueger, Principal, representative.

Ms. Pelletier introduced this item noting it is a pretty straight forward site plan. There are not a lot of changes proposed other than the building. Because of the threshold set forth in the Ordinance on square footage, the pole barn did trigger the need to come to the Board. They have an existing garage on the property and are proposing to add a 36' x 60' pole barn to it. They are not proposing any utilities or site changes. It is already a gravel area and the Town Engineer looked it over and felt that it did not

trigger any changes to the stormwater management system they have on site. They do have a DEP Site Location of Development existing permit on this property. They did submit some documentation from DEP stating it would come under an exemption. They have many exemptions and there is one for schools so they did submit that documentation. There is no signage, no landscaping, no change to solid waste and no outstanding items from a Staff perspective. Other department heads had no concerns with the application.

Brendan Krueger, Principal of Pine Tree Academy and a Freeport resident advised that they do have lighting from the other building but are not planning to bring in water. Chair Campanelli mentioned that if they put lighting on the outside of the building, the Board could address it in the approval process.

Proposed Findings of Fact: (Section 602.F. of the Freeport Zoning Ordinance)

a. Preservation of Landscape:

The applicant is presenting plans to construct a 36' X 60' pole barn structure which will be used for storage. The pole barn will be connected to the existing industrial arts building. An existing garage in this location will be removed. The remainder of the area is currently gravel. No additional vegetation will be removed. Based upon this information, the Board finds that this standard has been met.

b. Relation of Proposed Buildings to the Environment:

The applicant is presenting plans to construct a 36' X 60' pole barn structure which will be used for storage. The pole barn will be connected to the existing industrial arts building. An existing garage in this location will be removed. The structure appears to comply with the required setbacks for the Rural Residential I District. The parcel is not within the Freeport Design Review District. Based upon this information, the Board finds that this standard has been met.

c. Vehicular Access:

No changes to vehicular access are proposed. Based upon this information, the Board finds that this standard has been met.

d. Parking and Circulation:

No changes to parking and circulation are proposed. Based upon this information, the Board finds that this standard has been met.

e. Surface Water Drainage:

No changes to the stormwater management system are proposed. The Town Engineer has suggested that they use an erosion control barrier down-gradient of the construction work. There is an existing Site Location Permit for the property, however in an email dated March 5, 2019, Alison Sirois from the Maine Department of Environmental Protection (DEP) says that this project will be an exempt activity under Site Law. Based upon this information, the Board finds that this standard has been met.

f. Utilities:

No new utility connections are proposed. Based upon this information, the Board finds that this standard has been met.

g. Advertising Features:

No signage is proposed. Based upon this information, the Board finds that this standard has been met.

h. Special Features:

There are no special features associated with this project. Based upon this information, the Board finds that this standard has been met.

i. Exterior Lighting:

No new exterior lighting is proposed. Based upon this information, the Board finds that this standard has been met.

j. Emergency Vehicle Access:

All public safety department heads have reviewed the plans. Based upon this information, the Board finds that this standard has been met.

k. Landscaping:

No new landscaping is proposed. Based upon this information, the Board finds that this standard has been met.

l. Environmental Considerations:

The parcel is not within the Marine Waterfront District or the Shoreland Area. No new utility connections are proposed. There is an existing Site Location Permit for the property, however in an email dated March 5, 2019, Alison Sirois from the Maine Department of Environmental Protection (DEP) says that this project will be an exempt activity under Site Law. Based upon this information, the Board finds that this standard has been met.

Conclusion: Based on these facts the Board finds that this project meets the criteria and standards of the Freeport Zoning Ordinance.

MOVED AND SECONDED: To approve the construction of a 36' x 60' pole barn according to the application of Pine Tree Academy as written and read by Staff. (Reiche & Watson)
VOTE: (6 Ayes) (1 Excused-Blanchard) (0 Nays)

Be it ordered that the Freeport Project Review Board approve the printed Findings of Fact and Site Plan Amendment for Pine Tree Academy for a new pole barn at on their property at 67 Pownal Road (Tax Assessor Map 22, Lot 74), to be built substantially as proposed, application dated March 27, 2019, finding that it meets the standards of the Freeport Zoning Ordinance, with the following Conditions of Approval:

- 1) This approval incorporates by reference all supporting plans that amend the previously approved plans submitted by the applicant and his/her representatives at Project Review Board meetings and hearings on the subject application to the extent that they are not in conflict with other stated conditions.
- 2) Prior to any work on the building, the applicant obtain a building permit from the Freeport Codes Enforcement Officer.
- 3) During construction, the applicant use an erosion control barrier down-gradient of the construction work.

Fletcher Property Group – Residential Open Space Subdivision – PUBLIC HEARING

The applicant is seeking preliminary subdivision approval for a residential open-space subdivision located off Young's Lane. Plans include four residential lots with a total of six single-family dwellings and four duplexes. A road extension and 34 acres of open space are proposed. Zoning Districts: Rural Residential I (RR-I), Resource Protection II (RP-II), & Stream Protection (SP). Tax Assessor Map 26, Lot 4A. Fletcher Property Group, LLC, applicant and owner; Peter Biegel, Land Design Solutions, representative.

Chair Campanelli explained the process that will be followed this evening and requested that everyone be respectful of others in the room. Ms. Pelletier introduced the item and explained that the proposal is a residential open-space subdivision off of Young's Lane. It's four lots with a combination of single-family and duplex dwellings. It is considered a major subdivision and is a three-step process. One is going through the conceptual review process which they did complete back in February. They are now at the preliminary which is sort of like a midway check-in and this is where we do the formal public hearing and take out the ad. Then based upon the comments they get tonight, or whatever action the Board takes, they will go away and work on their final plans. We would not see them back until they have everything tied up and in place. There has been a lot of discussion that has taken place about a lot of different pieces of it which she reviewed. She expects questions will follow.

MOVED AND SECONDED: To open the public hearing. (Watson & Troidl) **VOTE:** (6 Ayes)
(1 Excused-Blanchard) (0 Nays)

Tom Saucier, Site Design Associates, introduced Justin Fletcher. He noted that this is the Site Analysis and Concept Plan. 34.9 acres of open space will be going to the Freeport Conservation Trust if the project goes through. He pointed out where the three single lots are proposed. 15.9 acres will be developed with single-family and duplex units which will probably be rentals. 820 feet of reconstructed and new roadway, 18-foot wide travel way with 2-foot grass shoulders. The open space will include public access. There will be a turn around at the end of the road for parking and access. He displayed the overall grading plan and it shows the well exclusion zones. They will not extend on to the abutting properties. The duplex structure on the steep slope has been moved. He explained the nitrates and that plumes follow topography and they will all be under the 5 milligrams per liter which is the Town's standard when they reach the property line. The State's standard is 10. A landscape buffer plan was provided based upon a field survey. They did prepare a preliminary stormwater run-off analysis based upon DEP's permit standards as well as the Town's. The driveway to the Dohaime's will be adjusted and will work fine. The turn-around at the end will have an easement and provide access to the open space.

He mentioned the buffer plan which is along the northwesterly property line. They surveyed every tree 4-inch diameter and larger. There are 86 trees located along that line and are primarily deciduous. Pictures of that line are in the application. They are proposing a 20-foot limited disturbance area along the line he pointed to. It will be accomplished by wording in the deed and deed covenants. Land will be left undisturbed with the exception of the removal of dead or diseased trees and limbs and the removal of invasive species. Initial construction of the proposed development for utility installation, grading and drainage purposes and the installation of trees, shrubs and herbaceous plant material. The plan is to plant 36 evergreen trees (4-5 feet) along that line and are shown on the plan but Mr. Saucier suggested that the final plant location be determined in the field, based upon maximizing buffering. No plantings are proposed in the wooded area. Along Mr. Dohaime's property there will be six more softwood plantings as well as hardwood plantings. Pictures of the existing buffering are in the application.

One thing in the Staff Report is to report on the locations of the plumes /septic systems. The response is in their package but basically the location of the septic systems is dictated by soil conditions, groundwater conditions, setbacks from drainage structures, ditches and water courses property lines, etc. Based on their analysis, these are the best locations for the systems and are in conformance to State Law. Nitrate plumes all move away from the abutters to the northwest. There will be a DEP Stormwater Permit because they will create 62,800 sq. ft. of new impervious area and will have to meet the general standards for that and treat stormwater runoff. There will be 2,525 sq. ft. of wetland impacted and he pointed out where the crossing will take place and they will need permitting. There will be work adjacent to the wetland to put in the storm drain at the intersection with Sequoia. The Army Corps. of Engineers will need to be notified of the wetland impact but there is no formal permit from them. He offered to answer question.

Mr. Hamlin mentioned stormwater drainage, the different catch basins and whatever is in there, given the fact that it will be a private road, he asked how will it be handled going forward. Mr. Saucier explained that under the DEP's Permit Process and the Town's as well, they will have to enter into a formal maintenance agreement with the Town because the DEP requires periodic inspections by a professional of all the storm drain systems on the site, even though it is private. There are annual inspection requirements during construction and there can be weekly inspection requirements before and after major storms. Once the project gets developed, there are periodic inspections required by both the State and the Town.

James Burch stated he owns the property at the bottom of Young's Lane. He pointed out where his property is located on the plan and he thinks there is supposed to be 100 feet of spacing from the edge of Young's Lane which would eliminate his front lawn. He fears he will lose trees and rhododendrons along that entrance. He also mentioned that in the spring his pipes cannot handle the runoff that comes down the hill and goes into his backyard. He did not get a notice about this meeting in the mail. He received something from the Granite Farm neighbors. Ms. Pelletier read the standard from the Subdivision Ordinance regarding street intersections and that they should be separated from adjacent accesses by at least 100 feet from other residential access and street intersections. She mentioned that the Board has discussed this internally but it is nothing that was raised in previous subdivisions. She noted that the Ordinance is not clear and would be good to have the Board look at it and hear some comments from the neighbors and applicant and maybe see how the Board feels if that standard applies or not. If it is something they need clarification on, the burden of proof is always on the applicant.

Mr. Saucier mentioned the first point to make is in the engineer's comments where he said he is not able to find the definition of access in the definition section but it appeared that it can refer to a residential driveway which then refers to the 100-foot separation. He suspects that in Freeport there is no standard sight distance for every driveway in a subdivision. He read sections of the Ordinance to the Board. They are waiting for a decision from the Codes Enforcement Officer and the Public Works Director is aware of the situation out there and has not voiced any concern with this project. Young's Lane has been there for a long time and the abutter has been there for a while. This project will improve drainage at that intersection and improve safety and sight distance. It is their position that the 100 feet does not apply to a single-family residential access. They will evaluate the situation and meet with Mr. Burch and address it prior to the final plan. Regarding the plume, that is ground water, it is not surface water. They will make sure that the runoff to the site does not come off at a higher rate than existing conditions.

Sean Cronin, abutter, noted he respects the process. There have been questions all along for months and multiple meetings whether or not the road can actually fit in the space, how much land is buildable, what will be donated, whether rental properties are appropriate in this area, what kind of wildlife disturbance will occur and the list goes on and on and it has gone on for months and multiple meetings. He read the original submission by the developer saying "the only way he is feasibly able to develop the land is because he recently purchased another piece of land that had enough material on site which will allow the construction of a road for a reduced cost." We can all agree that this was not a mistake made earlier. It was intentional all along. There was material to be brought in to develop this road. He explained what takes place in his neighborhood. He asked the Board if it would want rock processing to take place in their backyards. They respect the Board but want the Board to think about this. The mountain of rock is there and it will take considerable time to process it and it is where they raise their families and spend time in their yards. They are trying to fight the good fight.

Victoria Winters noted she and her husband have a pool in their backyard and they have heard stories of people's foundations being cracked when rocks were processed. If something does happen, she asked who she will go to and who pays for that. She works at home and if she is on a conference call and can't hear, who does she call to get them to stop. From her porch she can throw a baseball and hit that rock and feels it is not acceptable to have this done in her neighborhood.

Mr. Saucier noted that there are pre-blast surveys within a certain distance of the blasting. Issues with the crushing could be dust but there is dust control employed with water. The Town has a Noise Ordinance that would regulate that. He feels there are regulations in place to mitigate those issues. He does not know how long it will take to process the 4,500-5,000 cubic yards. The rock will be crushed to meet the specifications for the road gravel and road base. It is common in subdivision construction.

Mr. Reiche noted that this has come up at every meeting when this item is on our agenda. If we have a letter from the Codes Enforcement Officer and now a letter from our Town Attorney that says there is no violation here so the Board has no authority over that. If an abutter is harmed by the ongoing rock crushing process, he assumes they have recourse against the developer. The only way the Board could have any involvement with the stone that was brought in, is if there is more there than is needed to build the road. The Board has an opportunity to put a condition of approval that we have an engineer come in at the developer's expense and confirm that there is no more there than is needed and if so, we have the authority to say that no more can be processed. Ms. Pelletier advised that until they get the final road design done, they won't know how much material they will need. She suggested that the Board require that number to be submitted by the applicant's engineer and then we can ask our peer review engineer to comment if he feels that calculation is adequate. Chair Campanelli added that the applicant is to submit a detailed plan in writing to outline the proposed plan for the timing of the processing. Ms. Pelletier noted the Board has the ability to put reasonable conditions. Early on the applicant did submit in detail a plan that they agreed had timing restrictions. If the Board wants to require some restrictions, it is important to let the applicant know that.

Justin Fletcher advised that they agreed to process between 9 a.m.-4 p.m. only during the week and estimated a 7-10-day window to do the processing. Anything they didn't need on site, they will use for fill on site. They were not planning on trucking anything off site. Some rock is too large to be crushed and will be used as fill.

Ralph Norris of 18 Norton Farm Road revisited the well exclusion zones. He explained why he disagrees with the Town Attorney's decision. He requested that the Board table this project until the alternate wastewater disposal scheme that does not impact their properties is submitted and approved.

Mr. Saucier mentioned that in the Board's packets there are nitrate studies, opinions from the State Site Evaluator, Senior Staff of Drinking Water Program and the Town Attorney that the well exclusion zones do not encumber the property. It is not a component of the septic system and not subject to setbacks. The State readily grants variances if there is a need to drill a well in a well exclusion zone. In this situation it is interesting on the Nitrate Plume Plan that even if there is a well exclusion zone, all the plumes are not moving towards these properties. As far as an easement not being recorded and someone drilling a well where they shouldn't, it is incumbent upon the well drillers to do their research. There is a State Data Base of all the septic systems designed in certain towns quite a ways back. On Lots 1, 2 and 3 there were some well spots that were difficult to find but you can find a spot on those lots but it needs to be outside the zone.

James Burch noted he didn't know if his questions were addressed at the bottom of his driveway. He pointed out where his driveway exists and that it is 10 or 20 feet from Young's Lane. He fears his whole front lawn will be destroyed. Mr. Saucier assured him that nothing will happen to his driveway. Mr. Burch advised that after a heavy rain, he has to scrape sand, dirt, etc. that runs into his driveway and requested that if this plan goes through, he hopes he won't have to continue scraping. Mr. Saucier advised that they will pave the road and it will be curbed. There will be catch basins to catch the stormwater and Mr. Burch won't have those issues.

Tim and Jean Meyer of Sequoia Drive pointed out where they live. He explained that they have lost their driveway twice because of surface water. The Town put in a second culvert under his driveway but it is still unmanageable. He asked the Board to consider the applicant consider reducing the amount of runoff from that property.

Tammy Morrissey of 6 Norton Farm Road wanted to refer back to the rock issue. She read section 509 of the Zoning Ordinance and noted that processing is not an exemption in the ordinance. She also read Section 11.9 of the Subdivision Ordinance. She also pointed out that surrounding towns put their public notices in *The Forecaster* which is generally circulated in this town. There are people in Freeport who do not subscribe to newspapers. *The Forecaster* is the one everyone reads. Chair Campanelli appreciated her pointing that out but noted that the Town Council and Planning Board's meetings are not posted in *The Forecaster* on a regular basis. It is something that can be addressed but is not something we are going to change tonight. As local papers are disappearing, there may be other ways that will need to be looked at as well. We all know it is a constant change right now with the press.

Mark Morrissey mentioned that he had a video showing a rock crushing operation with the noise and dust but that ship has sailed.

Sarah Cronin of 14 Norton Farm Road asked if the Board or the Town pulls a bond for this project. Ms. Pelletier advised that for any site plan approval or subdivision, the developer posts a performance guarantee to cover the cost of sitework but it is really there to make sure they don't start the project and leave the site a mess. If they were to jump ship on a project the Town can legally draw on that bond to clean up the site or finish the infrastructure. Not through us do they have an insurance policy. If there is a civil issue, homeowners have their own legal rights but it is not something the Town gets involved in.

MOVED AND SECONDED: To close the Public Hearing. (Reiche & Watson) **VOTE:** (6 Ayes)
(1 Excused-Blanchard) (0 Nays)

Mr. Reiche asked if the Homeowner's Association's declarations and deed restrictions go to the Town Attorney for review. Ms. Pelletier advised that the Ordinance requires, because it is a private road, that the Road Maintenance Agreement does go to the Town Attorney but does not specifically require that the HOA documents do. Those are private documents. Once they leave here for these subdivisions, they do get recorded in the Registry.

Mr. Troidl mentioned the rock issue and feels the Board cannot deny the ability to crush the rock based on everything the Board has in front of it. In his mind, what would be the alternative if it gets trucked off and then the site gets developed and someone will bring in processed material and there will be three times the truck traffic that they would have had in the first place. He would be interested in knowing that this situation won't happen again and that it is dealt with before it gets to the Board if someone is hauling and doesn't have a permit and whatever the limits are. Chair Campanelli does not want to set a precedent. The rock is there and trucking it all out to get it crushed and then bringing it all back would be tripling the issue. Mr. Norris hopes the Board will come down and listen to the processing.

Chair Campanelli pointed out that there is no mention of a letter from the Freeport Conservation Trust and that should be in the submission and on the drawings.

Mr. Wing asked if the abutters provided any written comments relative to the specific legal arguments pertaining to Section 509. Ms. Pelletier advised that written comments were provided at earlier meetings with the exception of the one that came in tonight. Mr. Wing asked if the specific argument Mrs. Morrissey laid out tonight has been included in written comment before. Mrs. Morrissey was certain she gave written copies back in November. Mr. Wing noted there are two separate issues here. There is a subdivision approval process and there is a question of rock and whether it can be processed on the site. The Board has a letter from the Town Attorney stating that his interpretation of 509 does not apply. Mr. Wing does not have the ability to follow that in detail tonight and check the ordinance and make an educated opinion. Under normal circumstance, he would be inclined to follow the letter written by the Town Attorney and move along on this issue. However, the Board told the abutters at different points, that it didn't want to hear about the rock issue. The process here was incorrect. The rock should not have been brought in and here we are with this problem. He would be inclined to allow the abutters to provide a written document outlining their argument and then have the Town Attorney weigh in in a formal way before moving forward further. This is an outstanding circumstance that was put upon them and he would give some more leeway for that.

Chair Campanelli stated that the Board did not ignore it. It had a letter from Nick Adams the Codes Enforcement Officer and that was what the Board was basing its opinion on moving this forward. Mr. Troidl did not disagree and noted the Board can vote however it wants but if it votes against the opinion of the Town Attorney, that is probably not very wise for the Town. Mr. Reiche would personally like to have a better understanding of why this was not a violation of the Subdivision Ordinance because it was a commencement of road construction before the subdivision was approved. We have a Town Attorney and a Codes Officer being quite clear that there has been no violation of the Zoning Ordinance or the Subdivision Ordinance. Mr. Troidl explained that the applicant said he didn't know he needed a permit and we have no reason not to believe him. If he found out he did need a permit and applied for one before he ever moved one yard of rock, he is guessing it would have been granted but he does not know that and then we would be in the same place legally.

Mrs. Morrissey advised that they have been in front of the Town Council, the Town Manager and the Board and they have a letter from Council Chair Sarah Tracy saying it is the Board's final decision, not the Town Council's decision. Chair Campanelli mentioned that the Board does not have a copy of that letter and it is not something to bring up now. Ms. Pelletier pointed out that she does have that letter that can be shared with the Board but they have not been in with the discussion the neighborhood has had with the Council.

Mr. Reiche noted that he hopes the public understands the Board is concerned when it says it is concerned about what its authority is. He would like to know what is in the letter if it speaks to the Board's authority. Ms. Pelletier provided a copy to Board members. Mr. Reiche asked if this is something that could be tabled since the Board is meeting on May 22nd so the Board could give some consideration to this letter and the issue Mr. Wing raised about what the Board's authority really is. Ms. Pelletier advised that the Board could always table it but would be hesitant to table it to the 22nd but technically if the Board is here having a public hearing and tables it and she wouldn't have to notify and the Board could continue it. It is not the Board's practice. The agenda for the 22nd has already gone out and if the Board is going to table, she suggested that it go on the June agenda so she can notify abutters and the public with the Board's standard procedure.

Doug Reighley, District 3 Town Councilor noted the term used is continuance rather than tabling. If you continue, you don't have to worry about any notification of the Board's meetings. It is just a continuance of the process. As a Town Councilor he wanted to say from Town Council that they appreciate the Board's volunteer efforts and the work it puts forward and they really respect what it does. This is just an aside.

Mr. Troidl noted that he does not believe the Board has any authority to order them to haul anything off but ultimately we could for whatever reason, not approve the subdivision if it didn't meet the Ordinance but that would still leave a pile of rock there. Letter wise, we rule on evidence essentially when the project is presented. It is his understanding that if the Board approves the subdivision, that approves the processing and the issue of it being hauled onto the site was already happening and we have no jurisdiction to say anything about that. It has already been decided by Codes Enforcement. The only question would be if any of that is incorrect. Chair Campanelli noted what is before the Board is a preliminary subdivision and we are here to look at the submission for the subdivision to see if it meets the preliminary submission application process. That is the Board's job tonight. Mr. Troidl mentioned if the rock did not exist, the only place that is in question somewhat is the entrance. The Town Engineer has provided his opinion on the site distance and the improvements the applicants have agreed to make. He asked if his fellow Board members feel it meets the preliminary requirements. Mr. Reiche had questions about buffering. He would like to have a peer review by a landscape architect on a number of issues related to buffering. He would like to clarify it more than what is No. 9 in the proposed motion.

Mr. Saucier mentioned the Board needs to look at what is required for a preliminary plan submission based upon the Board's checklist. None of that information was required to be submitted but they did meet every submission requirement. They are happy to get those comments so it will better prepare them for a final plan submission. For the record, they don't take exception to them. His only comment on the rock is that the Codes Officer and Town Attorney weighed in. If the Board thinks it needs another opinion, he asked that the Board not hold up preliminary approval if the Board is so inclined. This is the fourth time they have been here and the rock seems to be the only issue and the Board has two opinions on the rock. Their intent is to proceed with no waiver requests.

Ms. Pelletier explained the 22 items that needed to be submitted in the preliminary submission. Ms. Watson mentioned the No. 10 item requirement be submitted was a detailed plan in writing of the proposed timing of the processing of the fill and the Board has the ability to weigh in on the particulars of that. She is in hopes that some of the abutters could give the Board a chance to buffer that process. She is looking for guidance if this goes forward.

Mr. Morrissey explained that winter time is the best time for the neighborhood if it has to happen. He advised that the neighborhood was not privy to what was given to the attorney to consider. If they were afforded an opportunity to give the Town Attorney direct questions, that would at least give them some solitude that their specific questions were answered. They know a precedent is being set with the processing. This opportunity would help clear the road and give them an opportunity to ask specific questions that they would get answered directly. He asked what the harm is for another few weeks.

Ms. Pelletier advised that she talked to the Town Attorney and asked questions that have come up. His responses were in response to her direct questions. He works for the Town and the Board and if they submit a letter and the Board wants him to give general comments, she feels it is fine. As Mr. Wing said, if they submit a copy of the letter, we can see if he is willing to respond. Ms. Pelletier said she cannot guarantee that is a position the Town Attorney would put himself in. Mr. Morrissey feels as a taxpayer, he should be able to ask a few questions. He does not know what happens in Ms. Pelletier's conversations. He does not know why they would have to go and hire an attorney since they have a few questions they want to ask that are specific to the Ordinance. Ms. Pelletier noted she would leave it up to the Board and if it is the way it wants to go, we can pose it there. If the Town Attorney comes back and says he is representing the Town and the Board and can't answer those, that will be the answer. We won't know until we ask that question.

Mrs. Morrissey explained that Ms. Pelletier did ask some of the questions on the points she brought up tonight but the dialogue on more stringent applying, we don't have it in the subdivision but we do have it in the zoning did not happen. There were line items in the ordinance that were not given to him. She feels the Attorney probably didn't read the whole ordinance. She read it twelve times and the ordinances are not written well. She advised Mr. Fletcher that they are not opposed to this development or the improvement to their neighborhood. She feels he builds nice homes and they are not trying to shut the whole thing down. They want it done right and can move forward feeling the Town is doing the right thing for the residents so another development doesn't happen where oops, I made a mistake and didn't know and well, okay we'll give you a waiver. They want to fix this and when this is over, she personally will be going to the Ordinance Committee and suggesting that we clean up these ordinances so this won't happen again. Chair Campanelli feels that will be great if she did that and she is not sure how to remediate the pain the neighborhood has gone through or feel will happen with the processing. She asked what Mrs. Morrissey is looking for.

Mrs. Morrissey explained that they don't want the rock processed there and they understand the hauling will be loud but they listened to it for 2-3 weeks being hauled in. Their point with the rock is that another developer could come in and say "I have ledge in Falmouth and want to bring it in. You let Mr. Fletcher do it and you have to let me do it." They probably could deal with two weeks of processing in the winter but they don't want it approved to the point where it is okay, we'll get a waiver and someone else can do it, too. They are here because they care about Freeport. When they viewed the plans, they asked for the road to be moved more centrally. They feel the duplexes truly do not fit into their

neighborhood. In their subdivision the lots have to be 2 ½ acres and they cannot subdivide. They would not have an issue with Mr. Fletcher adding two or three single-family homes.

Chair Campanelli explained that the Board can only go by the way this property is zoned. Mr. Troidl noted that Mr. Fletcher would have the choice to put this many homes on all that land. It is his choice what he wants to do with the land.

Mr. Wing noted that if the rock is put aside and looking at the requirements for the preliminary approval process, those requirements have been met. Mr. Troidl mentioned that if the community wants to submit a letter with their questions the way Mrs. Morrissey laid it out, it would be fine with him. The Town Attorney will not answer anything he feels he cannot answer professionally so it may come back without an answer if he feels that way. It makes sense to him. He asked the applicant if he would be back in June or July. Mr. Fletcher explained that they were required to have DEP approve the stormwater 75-90 days out, and they will not have that answer before the next meeting. Mr. Troidl feels the Board has enough time for the Town Attorney to get questions and answer questions and the landscape peer review. If the project team gets to the point where they are comfortable with what they are going to submit, obviously they have had peer reviewed and that gets peer reviewed. If we get that as the final and either it is already corrected to meet the peer review or whatever, we do it all at once and that doesn't cost any more time.

Chair Campanelli asked Mr. Saucier to address Mr. Burch on the buffering. Mr. Saucier explained that now for the record, based upon the peer reviewer's comments, they are going to revise that entrance and reduce the amount of impact to their property next to Mr. Burch's property. He will go on record and say they will consult with Mr. Burch to make sure they come up with a mutually acceptable agreement. Chair Campanelli recalled that some plants may be removed and she wanted to make sure that that gets remedied. Mr. Saucier advised that it will be remedied. They won't want him coming to the next meeting upset. Mr. Reiche asked Mr. Saucier to talk about the vegetation at the entrance to the road, the grades and if the natural vegetation in place would prevent headlights shining into homes. Mr. Saucier explained the grades would help them and Mr. Reiche mentioned that was one of the things he wanted to have a landscape peer reviewer look at.

Mr. Saucier mentioned that if the Board is inclined to approve the preliminary plan tonight, he requested a scope of what the peer reviewer's work will be and they can work with the peer reviewer to get it addressed before final. Ms. Pelletier advised that she feels she needs clarification on what the Board wants that peer reviewer to specifically address in the buffering. We haven't heard any comments from the neighbors on the buffering plan. If they want to comment, she feels it is important to hear their comments. Secondly, she needs clarification as to what the Board feels at this point they need a legal clarification on the Board's behalf from the attorney. The Town Attorney answered some of the questions raised previously.

Mr. Saucier pointed out that there are pictures in the Board's packets of the existing buffer out there that they are not going to touch and offered to display some. There is none at the entrance to the road. It is for the northwesterly property line. Mr. Troidl mentioned the entrance and that the Board heard of all the water issues, curbing, catch basins and the whole deal. Typically, the applicant is not allowed to put any more flow out than the property currently has but it may not be advisable in this instance and whether Earl Gibson is the best person to comment on that. Mr. Saucier pointed out a large 36" culvert and explained that they are trying to improve what is coming out of Young's Lane and it definitely will be an improvement.

Ms. Winters explained her concern that with the way the road is shaped, there will be direct headlights shining into her house. She feels the trees they are considering take a long time to grow and she will experience a lot of years with headlights shining in especially with the increased traffic from the duplex. She would like more consideration put into the buffering for short term impact. Mr. Saucier feels the plantings are pretty solid but they will be supplementing the holes. Chair Campanelli feels 5' evergreens will help year-round with the headlights but you have to allow room for growth.

Mr. Reiche read a section from the ordinance about preliminary approval because he feels it is a fairly low barrier to have a complete preliminary plan. Although there are things about this plan that he does not like, within the Board's authority he feels the next step is approval of the preliminary plan. If the Board were there, he would ask that we add to the conditions prepared by staff:

- Clarification from Codes Enforcement Officer or whoever if the Codes Enforcement Officer or Ms. Pelletier feels it should go to the Town Attorney with respect to the access issue. He feels the definition of access is not a driveway. That provision is talking to a town road or public way and he would like to get clarification of that.
- He would like a peer review by a landscape architect at the developer's expense to generally confirm conformity to this landscape plan to Section 11.C and specifically with near term effectiveness of buffering from traffic and lights from the abutters.

He explained *near term* because he planted 5-foot trees and he is upset with himself because he will not live long enough for them to matter. The trees the Board saw were much larger than that but he would like a landscape planner say yes, this is effective buffering and it is going to be effective from the get go.

Ms. Pelletier asked the Board if it was satisfied with the peer review they got for the engineering because if the comments were good and gave the Board what it needed, she would be inclined to use the same firm. They have a landscape architect within the firm. Mr. Saucier asked the Board to make sure it is a landscape architect and not an engineer.

Mr. Hamlin referred back to the rock and its processing, he asked if there is any flexibility on either side in terms of timing on when that work would start. Mr. Saucier mentioned they are flexible on the time of day, the time of week, business hours week days. Crushing rock in the winter time does not make sense since they have to build a road during summer months. Mr. Morrissey noted that Mr. Biegel at the last meeting said winter was ideal for processing the rock and stipulated November to March. Ms. Winters explained that seven kids leave for school at 8:15 a.m. and return at 3 p.m. She does not want them to be impacted by this. She wants them to come home and play in the backyard.

Ms. Pelletier advised that she has clarity on the landscaping and while Mr. Reiche did a great job in his motion, there was no comment on long-term impact but she assumes the Board would want that included and how effective that buffering would be long term. Mr. Reiche noted that it was implied. Ms. Pelletier is not clear other than that one condition that Mr. Reiche said regarding clarity on the access, she asked the Board what else it needs legal clarification on at this point or if it feels it has what it needs.

Mr. Troidl read from the Town Attorney's letter and he essentially answered the questions. The two Mr. Troidl was thinking of was No. 3 and No. 5. Mr. Wing pointed out that the abutters are making a legal

argument and the Town Attorney has already issued an opinion. This would give them a final opportunity to articulate any ideas and address sections of the ordinance that they think perhaps were overlooked. The Attorney could read those comments and say “my opinion is still exactly what it was three weeks ago” which would be okay but he is suggesting there may be a final opportunity for them. Mr. Wing does not want to continue arguing about this tonight. Chair Campanelli pointed out that what the Board is doing tonight will not change a lot a far as the subdivision goes.

Mrs. Morrissey explained that she was referring to the Zoning Ordinance and that is the most stringent Section 509 and it is kind of contradictory and that is the point they are trying to make. More discussion followed.

Chair Campanelli noted she is uncomfortable with saying that we want them to move forward but we want more legal information. Ms. Pelletier heard Mr. Wing say he wants to hear what they have to say and see the response in writing and is not clear on Mr. Reiche’s question and appreciates their concern in wanting to ask those questions. We have never had the public submit questions for the Town Attorney who is working for the Board. The goal of the questions she asked of him was to flag some of those sections they had been referencing to clarify whether or not they apply. If the Board has questions specifically that it wants her to address in certain standards, she definitely wants them to be clarified but she is not getting that from the Board. Chair Campanelli did not have any. She feels the Town Attorney has answered the questions but she is not saying she agrees with the ordinance. There are a lot of conflicts in it. She asked for a motion but noted the Board would want the effectiveness of the landscape buffer, a letter from the Freeport Conservation Trust and any pertinent legal information on that and it will be on the plans as well. Ms. Pelletier advised that she is clear on Mr. Reiche’s conditions. We will have the peer review on the landscaping both short term and long term specifically in regards to 11.8.c. He wants clarification from the Codes Officer or the Town Attorney regarding the access issue and whether or not a driveway is considered access. Mr. Reiche added that additionally on the buffering beyond just the road section, he wants to know if this buffering is near term and long term going to be effective in the lights on abutters. Mr. Hamlin asked about future maintenance of the buffering. Mr. Troidl advised that the print shows limited landscape buffer so it is already stated.

MOVED AND SECONDED: To accept the motion as written in the Staff Report with the following changes: that No. 9 the peer review of the landscaping buffer per the discussion in the Minutes we just had that Caroline has for that scope. Add No. 13. that we want a letter from the Freeport Conservation Trust reflecting open space land. Add No. 14. That we see clarification from the Codes Enforcement Officer or whoever Planning Staff thinks is appropriate on the definition of access and whether it relates to driveway. (Troidl & Reiche) **VOTE:** (6 Ayes) (1 Excused-Blanchard) (0 Nays)

Proposed Motion: Be it ordered that the Freeport Project Review Board approve the preliminary subdivision plans submitted by Fletcher Property Group, LLC., for the proposed Young’s Lane Subdivision (Tax Assessor Map 26, Lot 4A) for a 14 unit residential open-space subdivision, preliminary plan set dated 04/24/2019. The Board finds that based upon the materials submitted by the applicant and the information contained in the record, the layout of the development is consistent with the information presented in the conceptual submission, that the applicant has submitted the required information per the Freeport Subdivision Ordinance and the applicant working towards the development of the final plans. The following condition(s) of approval and/or items shall be incorporated into the final submission:

- 1) The approval of the preliminary plan shall not constitute approval of the final plan or intent to approve the final plan.

- 2) Prior to submitting for final approval, and per Article 8.1.B of the Freeport Subdivision Ordinance, the applicant obtain approval in writing from the Maine Department of Environmental Protection for a NRPA Wetlands Alteration Permit and a Maine DEP Chapter 500 Stormwater Permit.
 - 3) Prior to final approval, the applicant obtain a final sign-off of the plans by Will Haskell, PE from Gorrill Palmer Consulting, whom is conducting the engineering peer review and municipal stormwater peer review on behalf of the Town of Freeport.
 - 4) A note be added to the recording plan stating that the wastewater disposal system for Lot 3 will require a de-nitrification system.
 - 5) The applicant provide supporting documentation from their engineer regarding the quantity of fill that will be required to be use in the construction of the road and other site improvements.
 - 6) The final submission include a detailed cost estimate to cover the cost of all sitework, including but not limited to, the cost of drainage, road and parking area construction, landscaping, buffers, stormwater management, erosion control, etc.
 - 7) A note be added to the recording plan stating that individual residential sprinkler systems in accordance with NFPA 13D are required.
 - 8) Prior to final approval, the road maintenance agreement be reviewed and approved by the Town Attorney.
 - 9) Prior to final approval, a peer review of the landscaping/buffer plans shall be conducted by a landscape architect who will conduct a peer review on behalf of the Town, with any recommendations to be incorporated into the final plan.
 - 10) The applicant submit a detailed plan in writing to outline a proposed plan for the timing on the processing of the fill material on-site and to incorporate into that plan, any suggestions made by the Board during the preliminary review discussion.
 - 11) A stop sign shall be added at the end of Young's Lane where it connects with Sequoia Drive; this should be reflected on the final plans.
 - 12) The final submission shall incorporate the requirements of Article 8, Appendix C, and Appendix H of the Freeport Subdivision Ordinance.
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ITEM IV: Continued discussion on possible updates to the Freeport Design Review Ordinance

The Board briefly discussed Design Review and the next steps.

ITEM V: Persons wishing to address the Board on non-agenda items.

The Board briefly discussed the notice of public notice and will take it up at a future meeting.

ITEM VI: Adjourn.

MOVED AND SECONDED: To adjourn at 9:33 p.m. (Troidl & Reiche) **VOTE:** (6 Ayes) (1 Excused-Blanchard) (0 Nays)

Recorded by Sharon Coffin