

**TOWN OF FREEPORT, MAINE**

Planning Department

30 Main Street

Freeport, ME 04032

Phone: 207-865-4743

www.freeportmaine.com

TO: FREEPORT PROJECT REVIEW BOARD
FROM: CAROLINE PELLETIER, INTERIM TOWN PLANNER
RE: STAFF REPORT
DATE: WEDNESDAY, September 18, 2019

Fletcher Property Group – Residential Open Space Subdivision	
Property Location:	Tax Assessor Map 26, Lot 4A
Zoning Information:	Rural Residential I (RR-I), Resource Protection II (RP-II) & Stream Protection (SP)
Review Type(s):	Open Space Residential Subdivision
Waivers Requested:	None

Background Information – The applicant is seeking final 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. The applicant was before the Project Review Board on 11/28/18, 1/16/19, & 2/20/19 presenting conceptual plans and a sitewalk was held on 12/8/18. The review of the conceptual plan was deemed complete by the Board on February 20, 2019. The Board granted preliminary approval on 06/19/19 and held a public hearing at that time.

Procedure– This application is considered a Subdivision-Major (Article 3 of the Subdivision Ordinance). The procedure involves three separate levels of review – conceptual, preliminary, and final. This review is of the final subdivision application. If the Board feels that they have the information needed to determine that the standards of the Freeport Subdivision Ordinance have been met (per Article 11 of the Freeport Subdivision Ordinance), they may take action on the submission at the meeting.

Road – The Board agreed at the February meeting, per the recommendation of a traffic engineer (see previously submitted letter from William Bray, dated January 22, 2019), and per Article 11.5.C.2.b (Freeport Subdivision Ordinance), to allow a less stringent standard for sight distances if the proposed improvements recommended by the traffic engineer are made. These improvements have been incorporated in to the final road design included in the submission.

On behalf of the Town of Freeport, a peer review of the project was conducted by Will Haskell, PE from Gorrill Palmer. One of the items previously raised during preliminary review, was about access spacing, per Article 11. 5.C.2.e.2 of the Freeport Subdivision Ordinance. This was something the Board asked for clarification on. In the attached email dated June 11, 2019, Nick Adams, Codes Enforcement Officer states the following: “I have reviewed Section 11. 5.C.2.e.2 of the Subdivision Ordinance and In my opinion “access” is not intended to include a driveway for a single or two family lot. Section 11.15.C pertains to Street Design Guidelines for new Public and Private Streets, and the term

access in Section 11.15.C.2.e.2 is intended to be a street serving either residential or commercial development or an shared access for a commercial or residential development.”

Mr. Haskell’s has completed his peer review of the final submission, and all of his prior comments have been incorporated into the final submission. His final review comments are included in a memo dated September 10, 2019 (attached). He concludes that the proposed road has been designed in general compliance with Section 11.5.i of the Town of Freeport Subdivision Ordinance.

Stormwater: As discussed at earlier meetings and based upon documentation previously submitted (letter dated 01/30/19) from the Maine Department of Environmental Protection (DEP), the development, as proposed, would not require a DEP Site Location of Development Permit. Even though the application was determined to not meet the threshold for a Site Location Permit, the application requires a DEP Chapter 500 Stormwater Permit. That review and licensing was conducted by the DEP and issued to Fletcher Property Group, with referenced approval of L-28328-MJ-A-N on 27 August 2019.

On behalf of the Town of Freeport, a peer review of the project was conducted by Will Haskell, PE from Gorrill Palmer. In regards to stormwater, he reviewed the submission for its compliance with applicable municipal ordinances. His previously raised comments were incorporated into the final submission. Mr. Haskell’s final comments are included in a memo dated September 10, 2019 (attached). He concludes that the proposed stormwater design has been designed in general compliance with Section 11.16 of the Town of Freeport Subdivision Ordinance and Section 529 of the Town of Freeport Subdivision Ordinance.

Filling of Land and processing of material – As previously discussed, a large amount of fill material was previously brought into the site without a permit (see attached memo from Nicholas Adams, Codes Enforcement Officer dated 12/27/18). Based upon numbers provided by the applicant, and an on-site estimate by Crooker Construction (on behalf of the Town), it is estimated that there are 4,500 – 5,500 cubic yards of material on the site (only 200 cubic yards or less can be brought in without a permit). Based upon submission materials, an additional 3,000 cubic yards of material will be needed to construct the project and will be brought in as “ready to use” material.

If Subdivision Approval is granted, the applicant intends to process the existing material on the site for use in the construction of the development. This would be allowed in association with final approval to construct the subdivision. Questions were previously raised by abutters about the processing of material on-site and specifically whether or not it is allowed. In the attached memo from the Codes Officer, Mr. Adams explains that obtaining subdivision approval from the Board would allow the processing and use of the material for the construction of the development and no additional permits would be required. Comments from Phil Saucier, Town Attorney, about the issue of the fill and processing it on-site were previously provided to the Board are included in an attached memo dated 05/07/19.

The Ordinance does not contain specific regulations for the processing of fill material in association with a project. The applicant did include some proposed restrictions in their submission, which include: limiting the hours for processing between 7am-5pm Monday through Friday; no processing within 300 feet of a dwelling (other than the one existing on the subject property); and, controlling particle emissions and dust with water. It is estimated by the applicant, that with these restrictions, the processing will take 7-10 days. At previous meetings, there have been comments from abutters regarding their concerns for the timing and processing of the material on-site. If the Board has concerns about the processing of the material on-site for use in the buildout of the development, the Board has the ability to attach “reasonable conditions” of approval.

Wells / Septics – The location of subsurface wastewater disposal systems have been shown on the plan. A hydrogeologic assessment and nitrate study have been completed by Mark Cenci Geologic, Inc. (dated April 22, 2019) and was previously submitted. His conclusion was that the proposal meets the requirements of the Town of Freeport for both water quality and quantity, with the note that the wastewater disposal system for lot three would require a de-nitrification system. This has been added as a note on the final recording plan. In addition, a note will be added to the recording plan regarding any future relocation of septic systems.

Public Safety – Public Safety staff have reviewed the plans. The Police Chief requested that a stop sign be added at the end of Young's Lane where it connects with Sequoia Drive; this has been added to the final plan set. The Fire Chief recommended that all residential dwellings have private sprinkler systems in accordance with NFPA 13D; a note indicating such has been added to the recording plan. The question has been raised about the two parking spaces to be granted to the Freeport Conservation Trust for parking on the site and whether or not allowing those to be on the paved turnaround is a concern in regard to fire protection and the ability to maneuver fire trucks in and out of the site. The applicant is taking another look at the proposed parking arrangement. The Fire Chief has been contacted for his review and comments; comments should be available prior to the meeting.

Association Documents – Association documents and by-laws were included in the submission. The by-laws and road maintenance agreement were reviewed by the Town Attorney. His comments are included in an email dated 09/12/19. There are some changes to the documents that he suggests; providing updated legal documents to incorporate these changes have been added as a condition of approval. In addition, he does recommend that a suggested condition of approval should be the actual formation of the non-profit corporation for the Subdivision Association; this has also been added as a proposed condition.

Freeport Conservation Trust – As previously noted, the open space will be gifted to the Freeport Conservation Trust. This open space will be protected from future development. Per a letter dated 01/30/19 from the DEP, the transfer of the gift of the open space land to the Freeport Conservation Trust "would have to occur before or at the same time as the subdivision is recorded"; this has been added as a proposed condition of approval. Concerns have been raised about the easement for the two parking spaces at the end of Young's Lane, and if it will adequately provide enough parking for public access and if not, how overflow parking will be addressed. Freeport Conservation Trust has been contacted to see if they can provide some additional information on this topic.

Buffering - The areas of proposed buffering have been updated on the plan. An inventory of existing vegetation and proposed plantings (along the abutting Granite Farms Subdivision) is shown on the landscaping plan. The plan does refer to the area as a "20 foot limited disturbance landscape buffer" and there is a note on the recording plan noting the restrictions in this area. One of the exceptions noted is "construction of the proposed development for road grading and drainage purposes..." Since the numbered trees shown on the plan in this buffer were taken into consideration during the peer review, a question for the applicant is will any of the existing trees within that area be removed? Although the proposed septic system locations appear close to the buffer, since it was not stated, it is assumed that the disposal fields and any associated grading will also not encroach into the 20-foot buffer. This is something that should be addressed by the applicant.

At preliminary approval, the Board did request a peer review of the landscaping "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." The peer review of the landscaping was completed by Chris DiMatteo, a Maine licensed Landscape Architect (ME #2896) with Gorrill Palmer. His comments are included in the Gorrill Palmer peer review memo dated September 10, 2019 (attached). He did offer some comments in

regard to how buffering could be improved. The applicant did respond to those comments with a memo dated 09/11/19 with an updated landscape buffer plan being provided; does the Board feel that the proposed landscape/buffer is adequate?

Proposed Motion: Proposed Findings of Fact:

11.1 Pollution

A. State Standard

Pollution. The proposed subdivision will not result in undue water or air pollution. In making the determination, the Board shall at least consider:

1. The elevation of the land above sea level and its relation to the flood plains;
2. The nature of soils and subsoils and their ability to adequately support waste disposal;
3. The slope of the land and its effect on effluents;
4. The availability of streams for disposal of effluents; and
5. The applicable state and local health and water resources rules and regulations.

The parcel is not located within the watershed of an Urban Impaired Stream. The location of Harvey Brook and it's associated wetlands have been shown on the plan. There is an area of FEMA Zone A flood plain on the property, abutting this area and the boundaries are shown on the plan. There is approximately 34.7 acres of open space on the parcel which directly abuts the flood plain, wetlands and brook, and which will be deeded to the Freeport Conservation Trust. This open space will be protected from future development. Per a letter dated 01/30/19 from the DEP, the transfer of the gift of the open space land to the Freeport Conservation Trust, would have to occur before or at the same time as the subdivision is recorded; this has been added as a proposed condition of approval.

Each lot will be served by a private wastewater disposal system which will be designed in accordance with the State of Maine Subsurface Wastewater Disposal Rules. The location of the passing test pits have been shown on the recording plan. A hydrogeologic assessment and nitrate study have been completed by Mark Cenci Geologic, Inc. (dated April 22, 2019). His conclusion was that the proposal meets the requirements of the Town of Freeport for both water quality and quantity, with the note that the wastewater disposal system for lot three would require a de-nitrification system. This has been added as a note on the final recording plan. The location of passing test pits has been shown on the recording plan.

The applicant will be processing the existing fill material on-site and to be used for the buildout of the development. The applicant is proposing to use water to control dust and particulate matter during the processing operation.

Based upon this information, the Board finds that this standard has been met.

11.2 Sufficient Water

A. State Standard

Sufficient water. The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision.

Each lot will have a private well. A note has been added to the recording plan that "within one year of the date of purchase, each lot owner shall be guaranteed by the subdivider access to a supply of potable water of at least 350 gallons per day..." A water withdrawal impact analysis was completed by Mark Cenci Geologic and determined that there should be adequate water for the development and recharge of the aquifer. Based upon this information, the Board finds that this standard has been met.

11.3 Impact on Existing Water Supplies

A. State Standard

Municipal water supply. The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be used.

Each lot will have a private well and will not be connected to the municipal water supply. Based upon this information, the Board finds that this standard has been met.

11.4 Soil Erosion.

A. State Standard

Erosion. The proposed subdivision will not cause unreasonable sedimentation or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.

Erosion control plans have been included in the submission. A peer review of the project, on behalf of the Town of Freeport, was conducted by Will Haskell, PE from Gorrill Palmer. Final review comments are included in a memo dated September 10, 2019 (attached). He concludes that the "erosion control plan is in general compliance" with this Article. Based upon this information, the Board finds that this standard has been met.

11.5 Traffic Conditions

A. State Standards

Traffic. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed.

The Board agreed at the February meeting, per the recommendation of a traffic engineer (see previously submitted letter from William Bray, dated January 22, 2019), and per Article 11.5.C.2.b (Freeport Subdivision Ordinance), to allow a less stringent standard for sight distances if the proposed improvements recommended by the traffic engineer are made. These recommendations have been incorporated in to the final road design included in the submission. A traffic assessment of the proposal was completed by Bill Bray of Traffic Solutions.

On behalf of the Town of Freeport, a peer review of the project was conducted by Will Haskell, PE from Gorrill Palmer. Mr. Haskell's has completed his peer review of the final submission, and all of his prior comments have been incorporated into the final submission. His final review comments are included in a memo dated September 10, 2019 (attached). He concludes that the proposed road has been designed in general compliance with Article 11.5.i of the Freeport Subdivision Ordinance. Based upon this information, the Board finds that this standard has been met.

11.6 Sewage Disposal

A. State Standards

Sewage disposal. The proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.

The project will not utilize the public sewer system. The location of subsurface wastewater disposal systems have been shown on the plan. A hydrogeologic assessment and nitrate study have been completed by Mark Cenci Geologic, Inc. (dated April 22, 2019). His conclusion was that the proposal meets the requirements of the Town of Freeport for both water quality and quantity, with the note that the wastewater disposal system for lot three would require a de-nitrification system. This has been added as a note on the final recording plan. Based upon this information, the Board finds that this standard has been met.

11.7 Solid Waste

A. State Standard

Municipal solid waste disposal. The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be utilized.

In accordance with Town of Freeport Chapter 28: Solid Waste Disposal Ordinance, each lot owner will be required to contract with a private waste hauler for the disposal of solid waste. The applicant has stated that the trees removed for required clearing will be chipped by a logging company and hauled away. Stumps will be ground and used for erosion control. Construction debris from the construction of homes will be collected in containers on site and hauled away. Based upon this information, the Board finds that this standard has been met.

11.8 Impact on Natural Beauty, Aesthetics, Historic Sites, Wildlife Habitat, Rare Natural Areas, or Public Access to the Shoreline

A. State Standard

Aesthetic, cultural, and natural values. The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, rare and irreplaceable natural areas, or any public rights for physical or visual access to the shoreline.

There are no known historic sites or significant wildlife habitat identified on the site. In a letter dated 04-18-18, Kirk Mohny from the Maine Historic Preservation Commission states that "No national register buildings or known national register eligible properties are on or adjacent to the parcels. In addition, the project area is not considered sensitive for archaeological resources."

In a letter dated 5/8/18, John Perry from the Maine Department of Inland Fisheries and Wildlife states that they have "...not mapped any Essential Habitats that would be directly affected by the project." He does note that there could be bats and the applicant should contact US Fish and Wildlife. They are not aware of any Significant Wildlife Habitats within the project area. They do recommend that there be a 100-foot undisturbed vegetative buffer maintained along the any streams.

In a letter dated 04/18/18, Kristen Puryear, Maine Natural Areas Program, states "...that there are no rare botanical features documented specifically within the project area."

A vernal pool assessment was completed by Mark Hampton Associates Inc with a report dated 05/28/18. No significant vernal pools were identified on the site. Based upon this information, the Board finds that this standard has been met.

11.9 Conformance with Zoning Ordinance and Other Land Use Ordinances.

A. State Standard

Conformity with local ordinances and plans. The proposed subdivision conforms with a duly adopted subdivision ordinance, zoning ordinance, floodplain ordinance, the comprehensive plan, and other ordinances included in the municipal code as appropriate. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.

The parcel is within the Rural Residential I and Resource Protection II Zoning Districts with the developed area (other than a small portion of the road) being within the Rural Residential I portion of the property. There is an area of FEMA Zone A

flood plain on the property, abutting this area and the boundaries are shown on the plan. There is approximately 34.7 acres of open space on the parcel which directly abuts the flood plain, wetlands and brook, and which will be deeded to the Freeport Conservation Trust. This open space will be protected from future development. This is a Subdivision – Open Space and 29.9 acres of open space are required; 34.7 acres are proposed. The proposal is in harmony with the vision of the 2011 Freeport Comprehensive Plan which states part of the vision as “allowing a variety of neighborhoods and housing types, at a variety of prices; protecting natural and historic resources; maintaining large tracts of undeveloped fields and forests, and providing opportunities to enjoy these places.” Based upon this information, the Board finds that this standard has been met.

11.10 Financial and Technical Capacity

A. State Standard

Financial and technical capacity. The subdivider has adequate financial and technical capacity to meet the standards of this section.

The subdivision plan was prepared by Dick Hamilton, a Professional Land Surveyor licensed by the State of Maine. The applicant’s team of professionals includes: Peter Biegel, Maine Licensed Landscape Architect with Land Design Solutions; Tom Saucier, Professional Engineer, Site Design Associates; Silas Canavan, Professional Engineer, Walsh Associates; and, other professional as previously referenced.

The cost estimate included in the submission for the proposed site improvements is estimated at \$320,000.00. A letter was submitted from C&G Capital LLC to confirm that the applicant has the funds available. In addition, in a letter dated 8/26/19 from Bangor Savings Bank, it is stated that C&G Capital has the funds available to assist with the financing of the proposed development. In the comments from Will Haskell, the Town’s peer reviewer, he feels that the cost estimate should be slightly higher. A proposed condition of approval has been added that the applicant “Establish a performance guarantee in the amount to cover the cost of all site work associated with the project, in an amount to be reviewed and approved by the Town’s peer reviewing engineer...” Based upon this information, the Board finds that this standard has been met.

11.11 Impact on Water Quality or Shoreline

A. State Standard

Surface waters; outstanding river segments. Whenever situated entirely or partially within the watershed of any pond or lake or within two hundred and fifty (250) feet of any wetland, great pond, or river as defined in Title 38, Chapter 3, Subchapter I, Article 2-B¹, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.

This parcel is not located within the watershed of a great pond or lake nor is it within the Shoreland Zone. Based upon this information, the Board finds that this standard has been met.

11.12 Impact on Ground Water Quality or Quantity

A. State Standard

Ground water. The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.

Each lot will be served by a private wastewater disposal system which will be designed in accordance with the State of Maine Subsurface Wastewater Disposal Rules. The location of the passing test pits have been shown on the recording plan. A hydrogeologic assessment and nitrate study have been completed by Mark Cenci Geologic, Inc. (dated April 22,

2019). His conclusion was that the proposal meets the requirements of the Town of Freeport for both water quality and quantity. The Harvey Brook is shown on the recording plan and will be protected by the abutting required open space which remained undeveloped. Based upon this information, the Board finds that this standard has been met.

11.13 Floodplain Management

A. State Standard

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

The developed area is in Zone C, areas of minimal flooding, on the FEMA Flood Insurance Rate Maps (FIRM). The location of Harvey Brook and its associated wetlands have been shown on the plan. There is an area of FEMA Zone A flood plain on the property, abutting this area and the boundaries are shown on the plan. There is approximately 34.7 acres of open space on the parcel which directly abuts the flood plain, wetlands and brook, and which will be deeded to the Freeport Conservation Trust. This open space will be protected from future development. No development is proposed within the flood plain. Based upon this information, the Board finds that this standard has been met.

11.14 Identification of Freshwater Wetlands

A. State Standard

Freshwater wetlands. All freshwater wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district.

Wetlands were delineated by Mark Hampton Associates, Inc. and the location of wetlands are shown on the recording plan. Based upon this information, the Board finds that this standard has been met.

11.15 Rivers, Streams, and Brooks

A. State Standard

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

The location of Harvey Brook and its associated wetlands have been shown on the plan. Based upon this information, the Board finds that this standard has been met.

11.16 Storm Water Management

A. State Standard

Storm water. The proposed subdivision will provide for adequate storm water management.

Based upon documentation previously submitted (letter dated 01/30/19) from the Maine Department of Environmental Protection (DEP), the development, does not require a DEP Site Location of Development Permit. The application requires a DEP Chapter 500 Stormwater Permit. That review and licensing was conducted by the DEP and issued to Fletcher Property Group, with referenced approval of L-28328-MJ-A-N on 27 August 2019. The preliminary memo from Will Haskell, peer

reviewer on behalf of the Town of Freeport, did contain some comments on stormwater and those comments were addressed in the final submission. Mr. Haskell's final comments are included in a memo dated September 10, 2019. He concludes that the proposed stormwater design has been designed in general compliance with Section 11.16 of the Town of Freeport Subdivision Ordinance and Section 529 of the Town of Freeport Zoning Ordinance. Two conditions of approval are proposed: that the applicant obtain a Maine Construction General Permit and the applicant enter into a Maintenance Agreement for a Stormwater Management System, with the Town of Freeport, and to be recorded in the Cumberland County Registry of Deeds. Based upon this information, the Board finds that this standard has been met.

11.17 Spaghetti Lots

A. State Standard

Spaghetti lots prohibited. If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond, or coastal wetland as these features are defined in Title 38, Section 480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than five (5) to one (1).

No spaghetti lots are proposed. Based upon this information, the Board finds that this standard has been met.

11.18 Phosphorus Impacts on Great Ponds

A. State Standard

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

The development is not within the watershed of a great pond. Based upon this information, the Board finds that this standard has been met.

11.19 Impacts on Adjoining Municipalities

A. State Standard

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

The parcels do not abut or cross the municipal boundary. 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 Subdivision Ordinance.

Proposed Motion: Be it ordered that the Freeport Project Review Board approve the printed Findings of Fact and final subdivision plan for Fletcher Property Group LLC, Inc. for a four lot, 14 units, open space residential subdivision, to be located on Young's Lane (Tax Assessor Map 26, Lot 4A), subdivision recording plan dated 04/23/19 and revised through TBD, to be built substantially as proposed, finding that it meets the standards of the Freeport Subdivision 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 site work, including but not limited to clearing of the site and/or processing of the existing material on the site, the applicant do the following:

- A. Enter into a Maintenance Agreement for a Stormwater Management System with the Town of Freeport, to be recorded in the Cumberland County Registry of Deeds, with yearly stormwater reporting to the Town of Freeport being required.
 - B. Pay a Pavement Maintenance Impact Fee to the Town of Freeport, to be based upon length of the road and the current impact fee effective at such time that the fee is paid. Applicants for building permits will also be required to pay a Pavement Maintenance Impact Fee at the time a building permit is applied for and based upon the size of the structure and the current impact fee effective at such time.
 - C. Establish a performance guarantee in the amount to cover the cost of all site work associated with the project, in an amount to be reviewed and approved by the Town's peer reviewing engineer, in a form acceptable to the Town Attorney. The performance guarantee, in accordance with Article 12.9 of the Freeport Subdivision Ordinance, shall cover the cost of all site work, including the road, erosion control, stormwater management, landscaping and demarcation of property lines, etc., along with the performance guarantee, a non-refundable administrative fee of 2% of the performance guarantee, in the amount of \$TBD, be paid.
 - D. Establish an inspection account, in the amount of 2% of the estimated costs of the required improvements, for inspection of the site improvements by the Town Engineer.
 - E. The developer have a pre-construction meeting with the Town Engineer.
 - F. The applicant file for a Maine Construction General Permit with the Maine Department of Environmental Protection.
- 3) The final signed mylar of the recording plan shall be recorded in the Cumberland County Registry of Deeds within ninety (90) days of the date upon which the plan is signed otherwise the plan shall become null and void.
 - 4) The transfer of the gift of the open space land to the Freeport Conservation Trust shall occur prior to the start of any sitework, and occur before or at the same time as the subdivision plan is recorded in the Cumberland County Registry of Deeds.
 - 5) Prior to the sale of any lot, the applicant shall provide the Town Planner with a letter from a Registered Land Surveyor, stating that all monumentation shown on the plan has been installed.
 - 6) The applicant adhere to the following conditions in regards to the processing of fill material on the property: limiting the hours for processing between 7am-5pm Monday through Friday; no processing within 300 feet of a dwelling (other than the one existing on the subject property); and, controlling particle emissions and dust with water.
 - 7) All plants planted on the development parcel as part of the buffer planting shall have a guarantee period of 2 years, beginning at such time that all plantings are installed and with review and inspection by the Town Engineer, or by the peer reviewing engineer, that plantings have been installed as approved. A performance guarantee, filed with the Town of Freeport, will be required to remain in effect for the duration of this time and will only be released upon completion of this time period and with final review and inspection of the plantings, by the Town, with confirmation that all plantings are viable.
 - 8) The applicant provide the Town of Freeport with an updated copy of the legal documents, to incorporate the changes suggested by the Town Attorney in an email dated 09/12/19.
 - 9) The applicant submit documentation of the actual formation of the non-profit corporation of the Subdivision Association prior to the sale of any building lots and/or dwellings.

Falcon Way Subdivision – Village Open Space Subdivision Amendment – PUBLIC HEARING	
Property Location:	Tax Assessor Map 20, Lot 13E
Zoning Information:	Village I & Freeport Village Overlay District
Review Type(s):	Village Open Space Subdivision - Amendment
Waivers Requested:	No waivers have been requested.

Background: The Falcon Way Subdivision was approved by the Board on 06/19/19. It is a four lot, Village Open Space Subdivision, with a private road and is located just north of the Village, with access off Main Street via Frost Brook Lane and then to Falcon Way. The parcel is in the Village I Zoning District and in the Freeport Village Overlay District.

Since the final approval was granted, the applicant has decided that they would like to be permitted to have larger building footprints; up to 1,800 sf per dwelling. There was a note on the previously approved plan that restricted building sizes to 1,416; this was primarily for stormwater management purposes. The stormwater management analysis has since been updated to reflect the change and the previously approved stormwater design for the property will be able to accommodate the increase in impervious area (total increase of 1,760sf). The note on the recording plan has been updated (note 15) and two other plan sheets have been updated with the new proposed building footprints and to reflect updated water service. No lot lines are being altered and no additional lots are being created. The Town Engineer has reviewed and approved the changes; his comments are included in an email dated 09/10/19.

Per Article 9 of the Freeport Maine Subdivision Ordinance, changes to a previously approved plan can require review and approval by the Project Review Board. There are no outstanding items with this application. The same conditions of approval from the 06/19/19 approval would still be applicable. No additional waivers have been requested.

Proposed Findings of Fact:

11.1 Pollution

A. State Standard

Pollution. The proposed subdivision will not result in undue water or air pollution. In making the determination, the Board shall at least consider:

1. The elevation of the land above sea level and its relation to the flood plains;
2. The nature of soils and subsoils and their ability to adequately support waste disposal;
3. The slope of the land and its effect on effluents;
4. The availability of streams for disposal of effluents; and
5. The applicable state and local health and water resources rules and regulations.

The parcel is located within the watershed of Frost Gully Brook, an Urban Impaired Stream. The brook and its wetlands do abut/are in the parcel and the location is shown on the plan. There is an area of FEMA Zone A flood plain on the property, abutting this area and the boundaries are shown on the plan. There is approximately 46,317 s.f. of open space on the parcel which directly abuts the flood plain, wetlands and brook. This open space will be protected from future development. Each lot will be served by a private wastewater disposal system and each lot meets the required State minimum lot size of 20,000 s.f. for lots with septic systems. Based upon this information, the Board finds that this standard has been met.

11.2 Sufficient Water

A. State Standard

Sufficient water. The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision.

Each lot will be connected to the public water system. In a letter dated 04/25/19, Aric Odone of MaineWater notes that they have the capacity to serve the project. Based upon this information, the Board finds that this standard has been met.

11.3 Impact on Existing Water Supplies

A. State Standard

Municipal water supply. The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be used.

Each lot will be connected to the public water system. In a letter dated 04/25/19, Aric Odone of MaineWater notes that they have the capacity to serve the project. Based upon this information, the Board finds that this standard has been met.

11.4 Soil Erosion.

A. State Standard

Erosion. The proposed subdivision will not cause unreasonable sedimentation or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.

Erosion control plans have been reviewed and approved by the Town Engineer (see memo dated 06/11/19). Based upon this information, the Board finds that this standard has been met.

11.5 Traffic Conditions

A. State Standards

Traffic. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed.

The applicant is proposing an extension of Falcon Way. The road would be 630 feet. A gravel road is proposed and the waiver to allow gravel was previously granted by the Board at the 03/20/19 Project Review Board meeting. In a memo (dated 03/13/19), the Town of Freeport's Superintendent of Public Works did request that the portion of Frost Brook Lane that is within the Route One right-of-way be paved and further suggests that an additional 10 feet beyond the right of way be paved to provide safer travel conditions due to the increase in use of the private gravel road. This has been added as a condition of approval. Adam Bliss, Town Engineer, did review and approve the plans for the reconstruction and extension of Falcon Way (06/11/19). Based upon this information, the Board finds that this standard has been met.

11.6 Sewage Disposal

A. State Standards

Sewage disposal. The proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.

Each lot will be served by a private wastewater disposal system and each lot meets the required State minimum lot size of 20,000 s.f. for lots with septic systems. Based upon this information, the Board finds that this standard has been met.

11.7 Solid Waste

A. State Standard

Municipal solid waste disposal. The proposed subdivision will not cause an unreasonable burden on the municipality's

ability to dispose of solid waste, if municipal services are to be utilized.

In accordance with Town of Freeport Chapter 28: Solid Waste Disposal Ordinance, each lot owner will be required to contract with a private waste hauler for the disposal of solid waste. In a letter dated 04/24/19 from Adrienne Fine, it is stated that during construction the disposal of land clearing and construction debris will be managed by the applicant and stumps and brush will be removed to a licensed facility. Building contractors will handle their own construction debris. Based upon this information, the Board finds that this standard has been met.

11.8 Impact on Natural Beauty, Aesthetics, Historic Sites, Wildlife Habitat, Rare Natural Areas, or Public Access to the Shoreline

A. State Standard

Aesthetic, cultural, and natural values. The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, rare and irreplaceable natural areas, or any public rights for physical or visual access to the shoreline.

There are no known historic sites or significant wildlife habitat identified on the site. Based upon this information, the Board finds that this standard has been met.

11.9 Conformance with Zoning Ordinance and Other Land Use Ordinances.

A. State Standard

Conformity with local ordinances and plans. The proposed subdivision conforms with a duly adopted subdivision ordinance, zoning ordinance, floodplain ordinance, the comprehensive plan, and other ordinances included in the municipal code as appropriate. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.

The parcel is in the Village 1 Zoning District and the Freeport Village Overlay District. There is an area in the gully that is in the floodplain and in which no development is proposed. This is a "Subdivision – Village Open Space"; 70,313 sf of open space is required. Approximately, 46,317 sf has been identified as being shown in the Secondary Conservation Area on the Village Open Space map, and the additional 23,966 sf will require a fee to be paid in lieu of open space (based on current fee set by the Freeport Town Council and in effect as such time that the fee is paid). Based upon this information, the Board finds that this standard has been met.

11.10 Financial and Technical Capacity

A. State Standard

Financial and technical capacity. The subdivider has adequate financial and technical capacity to meet the standards of this section.

The subdivision plan was prepared by Wayne Wood, licensed land surveyor with Wayne T. Wood & Co. In a letter dated 04/24/19, Aaron Cannan from Katahdin Trust states that the applicant has the financial capacity to complete the project. Based upon this information, the Board finds that this standard has been met.

11.11 Impact on Water Quality or Shoreline

A. State Standard

Surface waters; outstanding river segments. Whenever situated entirely or partially within the watershed of any pond or lake or within two hundred and fifty (250) feet of any wetland, great pond, or river as defined in Title 38, Chapter 3,

Subchapter I, Article 2-B¹, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.

This parcel is not located within the watershed of a great pond or lake nor is it within the Shoreland Zone. Based upon this information, the Board finds that this standard has been met.

11.12 Impact on Ground Water Quality or Quantity

A. State Standard

Ground water. The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.

Passing test pit locations were determined by Mark Hampton Associates, Inc. and the locations have been shown on the plan. Each lot will have a private septic system. The brook and gully will be protected by the abutting required open space which remained undeveloped. Based upon this information, the Board finds that this standard has been met.

11.13 Floodplain Management

A. State Standard

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

The developed area is in Zone C, areas of minimal flooding, on the FEMA Flood Insurance Rate Maps (FIRM). The parcel is located within the watershed of Frost Gully Brook, an Urban Impaired Stream. The brook and its wetlands do abut the parcel and the location is shown on the plan. There is an area of FEMA Zone A flood plain on the property and the boundaries are shown on the plan. No development is proposed within the flood plain. Based upon this information, the Board finds that this standard has been met.

11.14 Identification of Freshwater Wetlands

A. State Standard

Freshwater wetlands. All freshwater wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district.

Wetlands were delineated by Mark Hampton Associates, Inc. and the location of wetlands are shown on the recording plan. Based upon this information, the Board finds that this standard has been met.

11.15 Rivers, Streams, and Brooks

A. State Standard

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

The parcel is located within the watershed of Frost Gully Brook, an Urban Impaired Stream. The brook and its wetlands

do abut the parcel and the location is shown on the plan. Based upon this information, the Board finds that this standard has been met.

11.16 Storm Water Management

A. State Standard

Storm water. The proposed subdivision will provide for adequate storm water management.

The Town Engineer conducted the review and stormwater permitting for the project. The parcel is within the Frost Gully Brook watershed, an urban impaired stream, which means that a reduced permitting threshold was applicable. In a memo dated June 11, 2019 (attached to the staff report) the Town Engineer concludes that the Stormwater Management plans meet the standards of the Freeport Subdivision Ordinance and the Maine DEP Chapter 500 Rules. The stormwater management analysis has been updated to reflect the new building footprint of 1,800 s.f. per dwelling on each lot and the design has the capacity for the change. Note 15 on the recording plat has also been updated to reflect this change. Two conditions of approval are proposed: that the applicant obtain a Maine Construction General Permit and the applicant enter into a Maintenance Agreement for a Stormwater Management System, with the Town of Freeport, and to be recorded in the Cumberland County Registry of Deeds. Based upon this information, the Board finds that this standard has been met.

11.17 Spaghetti Lots

A. State Standard

Spaghetti lots prohibited. If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond, or coastal wetland as these features are defined in Title 38, Section 480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than five (5) to one (1).

No spaghetti lots are proposed. Based upon this information, the Board finds that this standard has been met.

11.18 Phosphorus Impacts on Great Ponds

A. State Standard

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

The development is not within the watershed of a great pond. Based upon this information, the Board finds that this standard has been met.

11.19 Impacts on Adjoining Municipalities

A. State Standard

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

The parcels do not abut or cross the municipal boundary. 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 Subdivision Ordinance.

Proposed Motion: Be it ordered that the Freeport Project Review Board approve the printed Findings of Fact and subdivision plan amendment for John Libby Construction, Inc. for an amendment to the previously approved Falcon Way Subdivision Plan, to be located on Falcon Way (Tax Assessor Map 20, Lot 13E), subdivision recording plan dated 12/17/18 and revised through 08/12/19, to be built substantially as proposed, finding that it meets the standards of the Freeport Subdivision Ordinance, with the following Conditions of Approval:

- 2) 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.
- 3) The conditions of the June 19, 2019 approval are still applicable.
- 4) The final signed mylar of the recording plan shall be recorded in the Cumberland County Registry of Deeds within ninety (90) days of the date upon which the plan is signed otherwise the plan shall become null and void.

The Beacon Residences – Commercial Open Space Subdivision	
Property Location:	Tax Assessor Map 22, Lots 24 & 24B
Zoning Information:	Commercial IV (C-IV)
Review Type(s):	Subdivision – Commercial Open Space, Site Plan Review
Waivers Requested:	Waiver of parking stall dimension.

Background: The applicant recently applied for Zoning and Subdivision Ordinance Amendments that allows for this application. The amendments added a new use of Subdivision – Commercial Open Space in the Commercial IV Zoning District and allows for higher density residential development. There is also a new requirement for open space (20% of the net residential acreage). The amendments also allow more than 15 units on a dead-end road (for this use). The project will require both Site Plan Review and Subdivision Review from the Board. Since this parcel is in the Commercial District; Section 527 of the Freeport Zoning Ordinance will also be applicable.

The applicant is presenting conceptual plans for the project. 144 dwelling units (in six residential buildings), 5 garage buildings, a clubhouse with pool and associated site improvements are proposed. The applicant has submitted a plan set which includes an existing conditions plan and an overall site plan. Based upon the net residential acreage calculation, 181 units would be permitted. 7.3 acres of open space are required; 7.7 acres of open space are proposed. The new standards of the Section 412.F.1 of the Freeport Zoning Ordinance do have the following standards for delineating open space:

- “For developments that require open space, the open space shall be delineated by using the following priority system:
- a. first priority – establish buffer of at least 50 feet where the Commercial District is adjacent to the Rural Residential District.
 - b. second priority – open space includes primary conservation areas to the greatest extent practical
 - c. third priority – at the discretion of the owner”

Process: This is considered a Subdivision-Major (per Article III of the Freeport Subdivision Ordinance) and process would involve three levels of review – conceptual, preliminary and then final. Since this is conceptual review, the Board shall review the submission to determine if the information provides a clear understanding of the site and identifies opportunities and constraints that help determine how it should be used, areas that are appropriate for conservation areas, and areas that are appropriate for development (refer to Article 5 of the Freeport Subdivision Ordinance). The Board shall also act on any requests for waivers at this time. Review of the Site Inventory Map and the Site Analysis and Conceptual Plan shall be considered complete upon a finding by the Project Review Board that the appropriate areas

have been determined for development and for conservation or open space. If the Board feels that they have the information necessary to make that determination, they could take action at the meeting, otherwise they should give the applicant on what additional information, or changes, would be needed.

Waivers: The applicant is requesting a waiver of Section 514.B.9 of the Freeport Zoning Ordinance to allow parking stall dimensions to be reduced from 9’x18.5’ to 9’x18’. Does the Board have thoughts on this?

Proposed Waivers: Be it ordered that the Freeport Project Review Board approve a waiver of Section 514.B.9 of the Freeport Zoning Ordinance to allow parking stall dimensions to be reduced from 9’x18.5’ to 9’x18’ in that the reduction will still allow for safe and adequate vehicular and pedestrian circulation on the site.

Proposed Motion: Be it order that the Freeport Project Review Board finds that the review of the Site Inventory Map and Conceptual Plan for The Beacon Residences – Commercial Open Space Subdivision (Tax Assessor Map 22, Lots 24 & 24B) is complete, as based upon plans dated 08/09/19 and revised through 09/06/19, the Board finds that the appropriate areas have been determined for development and for open space as the open space in accordance with the standards of Section 412.F.1 of the Freeport Zoning Ordinance.

Denney Block Freeport, LLC – Demolition Request – PUBLIC HEARING	
Property Location:	Tax Assessor Map 11, Lot 110
Zoning Information:	Village Commercial I (VC-I), Design Review District I – Class B
Review Type(s):	Design Review Certificate
Waivers Requested:	None.

Background: The applicant is seeking approval to demolish a portion of an existing Class B building at 58 Main Street in Design Review District I. Since this is a Class B building, per Section VIII of the Freeport Design Review Ordinance there is a four-month waiting period required for demolition, for all or parts of the building unless a waiver of the standard is request and approved by the Board.

The requirements of the Design Review Ordinance are as follows:

“Section VIII Design Guidelines

A. Buildings Classified as A or B

- 1. A or B Buildings:*** Any building classified as A or B, or any part of appurtenance thereof, including but not limited to walls, fences, light fixtures, steps, driveways, parking areas and paving shall only be moved, reconstructed, altered or maintained in a manner that will preserve its historical, architectural and neighborhood significance. When making that determination, recognition shall be given to the design and placement of buildings previously on the site and their past relationship with surrounding buildings.
- 2. Demolition or Removal of A or B Buildings:*** Should a property owner want to demolish or remove all or any portion of a building classified A or B, a four (4) month notice of the proposed demolition or removal shall be given before a demolition or removal permit is issued. The owner of the affected building shall cause notice to be published in a newspaper of general circulation at least three (3) times prior to demolition or removal. The first notice shall be published no later than fifteen (15) days after the application for a permit for demolition or removal is filed and the final notice shall be published approximately fifteen (15) days prior to the date of the Project Review Board meeting where action on the application is expected. The purpose of this section is to

further the purposes of this Ordinance by preserving buildings classified A or B which are important to the architectural, historical and neighborhood significance of the Town, and to afford the Town, interested persons, historical societies or organizations the opportunity to acquire or to arrange for preservation of such buildings. The notice of the proposed removal shall be forwarded to the Freeport Historical Society, the Freeport Town Council and the Freeport Planning Board. The Project Review Board shall conduct a public hearing prior to its vote on an application to provide an opportunity for public comment of the proposed demolition or removal.

In addition, the property owner shall also submit a statement to the Board describing the need for demolition and why the building can't be saved or renovated for another use.

3. Negotiation to Avoid Demolition: During this four (4) month period, the Board may negotiate with the owner of the property and with any other parties in an effort to find a means of preserving the property. Such negotiations may include relocation to a new site, recommendation for a historic easement pursuant to Section XI of this Ordinance, adaptive re-use of the structure, or inducements to interested third parties to purchase the property for the purpose of preserving it. The Project Review Board may issue a permit to remove a building prior to the expiration of the 4 month notice period if adequate provisions are made to move the building for the purpose of preserving it."

The portion of the building that the applicant is proposing to demolish is on the south side of the building. It is two levels and the facades are visible from Main Street and Mill Street. The space contains portions of a few retail stores including the two spaces on the lower courtyard area. The height of this portion is lower in height than the remainder of the building.

Process: The only request before the Board this evening is the demolition request. Before the portion of the structure can be removed, the applicant will need a Design Review Certificate for how they are going to restore the remaining building façade; this information will be included in a future submission for the infill development project for the property. At the last meeting, the Board determined that the four-month notice period does apply to this application, however "the applicant has met the intent of the Ordinance by preserving Class A and B buildings through its previous public notices in 2015." The Board concluded by stating that the applicant needed to run the final notice and circulate to other parties, as required by the Ordinance. Documentation of the notices and the circulation of the notices, has been included in the Board's packets.

Proposed Motion: Be it ordered that the Freeport Project Review Board issue a Design Review Certificate for Denny Block LLC, for the demolition of a portion of the building at 58 Main Street, application dated 12/29/14, as the Board finds that the requirements of the four month notice period have been met, with the condition that the demolition of the portion not occur until the applicant first obtains a Design Review Certificate for restoration of the remaining building façade.

Caroline Pelletier

From: Philip Saucier <psaucier@bernsteinshur.com>
Sent: Thursday, September 12, 2019 1:34 PM
To: Caroline Pelletier
Subject: RE: Youngs Lane - submission question
Attachments: Youngs Lane Declaration of Protective Covenants Restrictions and Easement....pdf; Deed to FCT_FINAL.PDF

Hi Caroline,

I have had a chance to review the Young's Lane Subdivision Owners Association Declaration and By-Laws as it relates to the maintenance of the interior subdivision road. Both documents make it clear that the maintenance of the road is the responsibility initially of the developer and then the individual lot owners upon transfer of the property. Article III(2) includes the following provision:

Until the Declarant Transfer, Declarant shall arrange for all plowing, salting and sanding of the Road as well as repairs, maintenance, repaving and replacement of same and of all related stormwater drainage infrastructure. After the Declarant Transfer, the Association shall have responsibility for maintenance of the Road and all related stormwater drainage and other infrastructure, subject to payment by the lot owners of their share of maintenance and repair costs as set forth in Article IV below

For sake of consistency, I recommend that the paragraph is amended to clarify that after transfer the Association has the same responsibilities as the Declarant and not just maintenance and stormwater drainage (i.e. plowing, salting, sanding, repairs, etc). The Declaration includes the allocation of assessments for the individual lots to be used to maintain the road in Section IV(3) which does include a more comprehensive list of road responsibilities, but this should be consistent and made clear in the road maintenance provisions in Article III.

The Declaration makes reference to the Subdivision Association in Article IV; I recommend that actual formation of the non-profit corporation is a condition of approval.

The Bylaws are sufficient to establish the meeting, budget, and assessment requirements, among other association duties and powers.

Finally, the individual lot deeds should contain reference to the Declaration and Bylaws which should also be recorded.

Take care,
Phil

Philip Saucier
Shareholder
Municipal & Governmental Services Practice Group Leader
207 228-7160 direct
207 774-1200 main
[My Bio](#) | [LinkedIn](#) | [Twitter](#)

BERNSTEIN SHUR

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To: Caroline Pelletier, Assistant to the Town Planner

From: Will Haskell, Maine PE #8518

Date: September 10, 2019

Subject: Final Plan Peer Review for Young's Lane Major Subdivision

We received the following information from the Town for review:

- Youngs Lane Residential Subdivision, Response to Town's Peer Review Consultant Comments, dated 8/26/2019, prepared by Land Design Solutions
- Youngs Lane Plans, including Subdivision Plan, C-500, C-501, L-100, dated 8/26/2019
- Maine DEP Stormwater Permit dated 8/27/2019

We have reviewed the technical engineering components of the project for general compliance with the Town Ordinances and generally accepted engineering standards. Chris DiMatteo, a Maine licensed Landscape Architect (ME #2896) in our office has reviewed the comment responses related to the landscaping.

Technical Engineering Review

1. The Applicant's response to comments dated 8/26/2019 have addressed our prior comments.
2. We find that the erosion control plan is in general compliance with Section 11.4 of the Town of Freeport Subdivision Ordinance.
3. We find that the proposed subdivision road has been designed in general compliance with Section 11.5.i of the Town of Freeport Subdivision Ordinance.
4. We find that the stormwater design for the project is in general compliance with Section 11.16 of the Town of Freeport Subdivision Ordinance and Section 529 of the Town of Freeport Zoning Ordinance. As required, the proposed development peak flows for the 2, 10, and 25-year storm events are limited to pre-development levels at the 5 analysis points, but the design and use of five underdrain soil filters.

Performance Guarantee

The Applicant has submitted a cost estimate for the improvements required to meet the standards of the Town of Freeport Zoning and Subdivision Regulations. The cost estimate that was submitted is as follows:

Erosion & sedimentation control =	\$ 6,000
Sitework =	\$197,000
Paving =	\$ 90,000
Loam & seed =	\$ 12,000
<u>Landscape buffer plantings =</u>	<u>\$ 15,000</u>
Total =	\$320,000

In general, the total performance guarantee estimate appears low for the proposed improvements. The purpose of the performance guarantee is to provide adequate funds to all the Town to complete the



approved construction if the developer were to abandon the project, or not complete certain aspects, for some reason.

The erosion control cost appears to be somewhat low given the length of silt fence and amount of erosion control blanket for ditching and slope stabilization. We would recommend increasing the E&S value to around \$10,000.

Based on additional input from Peter Biegel, we understand that the Sitework number from Dube Excavation includes: "clearing and grubbing the site, rough grading (cuts and fills), processing the onsite material and placing it, fine grading, gravel and compaction". If that is the case, we recommend that the stormwater improvements, including culverts, storm drain piping, catch basins, underdrain soil filters and associated riprap be added to the performance guarantee estimate. We recommend that the Design Team/Contractor provide estimated costs for these stormwater improvements.

Once the revised costs are submitted, the final performance guarantee amount and inspection escrow amount can be determined. The inspection escrow is set at 2% of the performance guarantee amount as specified in Section 10.1.A.2 of the Subdivision Ordinance.

Landscaping Review

1. The Applicant responded to our prior landscaping/buffer comments. The Applicant/Design Team appears to have worked closely with Burch near the entrance to the subdivision and provided rhododendron plantings as requested.
2. We were requested to provide input on the following questions:

- 1) *Will the vegetation at the entrance to the road prevent headlights from shining into homes (given existing vegetation that will be retained, grades and proposed supplemental plantings)?*

GP Comment: It appears to be the case with the grade being lower along the entry of the road than what the elevation of the windows of the home may be at. There will be some vegetation remaining that will provide some screening and when the new Rhododendrons are at maturity, they will add to the screening.

- 2) *Please comment on the landscape plan's generally conformity to Section 11.C [11.8.C] and specifically with near term effectiveness of buffering from traffic and lights from the abutters?*

GP Comment: Concerning near term effectiveness of buffering from traffic and lights from abutters, it appears the abutting homes to the north are at a higher elevation than the proposed street, so headlights should not be an issue, especially when considering the existing vegetation shown in combination with proposed evergreens. Vehicles along the proposed street may be more apparent in the winter months, but it appears the buffering should be adequate.

For the abutting home to the south (Duhaime), since there is no existing vegetation that would provide a screen, the near-term effectiveness is likely to be inadequate compared to the abutters to the north. Headlights from vehicles are unlikely to be directed towards the Duhaime residence.

- 3) *How effective will the buffering be long term?*



GP Comment: Regarding the north side of the proposed street, if the mature vegetation is maintained and the planted evergreens mature it should be an effective screen. The Duhaime residence is unlikely to have the same level of effectiveness, and at maturity the buffer plantings will likely not screen the proposed rip-rap stormwater features proposed along the new street.

4) *Do you have any feedback on long term maintenance of the buffering?*

GP Comment: The plan notes on the Landscape Buffer Plan allows for the removal of invasive trees or dead and dying trees. This should be elaborated as to how, the lot owners and/or homeowners association, will go about making the determination of removing trees. Enforcement measures and accountability should be determined.

In addition, the buffer note (Note I, Sheet L-100) allows for the “development for road grading and drainage purposes:”. Is this a one-time allowance for construction, where the road grading extends into the proposed buffer in the vicinity of stations 17+25 to 18+75? If this is to be allowed post construction, enforcement measures and accountability should be determined as well.

As noted in our prior comments we also recommend that the guarantee period for the proposed plantings be made clear prior to final approval. Our recommendation is two full growing seasons.

From: [Nick Adams](#)
To: [Caroline Pelletier](#)
Subject: RE: "Access" - Freeport Subdivision Ordinance
Date: Tuesday, June 11, 2019 4:43:48 PM

Caroline,

I have reviewed Section 11.15.C.2.e.2 of the Subdivision Ordinance and In my opinion "access" is not intended to include a driveway for a single or two family lot. Section 11.15.C pertains to Street Design Guidelines for new Public and Private Streets, and the term access in Section 11.15.C.2.e.2 is intended to be a street serving either residential or commercial development or an shared access for a commercial or residential development. For example, Multifamily residential development (Somerset Condos) and commercial development (Shaw's plaza), might not actually have a street but have an access from the property that serves a higher level of service onto a public way, and any new street would have to be separated from this type of residential or commercial access. The subdivision ordinance defines a driveway as (A vehicular accessway serving two (2) dwelling units or fewer), Section 11.15.C.2.e.2 does not include the word driveway therefore my opinion is that a new street does not have to be separated from a driveway serving a single family or two family lot.

Furthermore, Section 11.15.C.2.f states the maximum number of accesses shall conform to section 512 of the Zoning Ordinance, because Youngs Lane only serves one and two family dwellings only section 512.C would apply which only requires minimal slope and angle standards and does not include sight distance requirements, setbacks from property lines, or driveway separations. Conversely, section 512.D, which applies to all accesses other than one and two family dwellings, does include the design standards for sight distance requirements, setbacks from property lines, or driveway separations which mirror similar design standards included in section 11.15.C of the subdivision ordinance. Which leads me to believe the intent was that driveways for one and two family dwelling are not considered an access and therefore not required to be separated per section 11.15.C.2.e.2.

Lastly, I would suggest that the Planning Board take a close look at both the Subdivision and Zoning Ordinance and where certain words have similar meaning and either define each differently or use the same terms throughout.

Nicholas L. Adams
Freeport Codes Enforcement Officer
Town of Freeport
30 Main Street
Freeport, ME 04032
207-865-4743
nadams@freeportmaine.com



From: Caroline Pelletier

Sent: Wednesday, June 05, 2019 2:08 PM
To: Nick Adams <nadams@freeportmaine.com>
Subject: "Access" - Freeport Subdivision Ordinance

Nick,

During the review of the proposed Young's Lane Subdivision project, the Town's peer reviewer made the following comment: "**Subdivision Ordinance Section 11.15.C.2.e.2 specifies access spacing. We were not able to find a definition of "access" in the definitions section, but based on this section of the ordinance, it appears that "access" can refer to a residential driveway. The ordinance states that "street intersections shall be separated from adjacent accesses; streets, by at least hundred (100) feet from other residential access and street intersections."** The existing and proposed Youngs Lane does not meet this requirement relative to the residential driveway to the Burch parcel located to the east on Sequoia Drive."

This question was brought up at the last meeting, and the Board made the following condition seeking clarification on what "access" means in terms for the Freeport Subdivision Ordinance: "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."

Can you please provide written clarification on this for the Board?

Thanks,
Caroline

Caroline C. Pelletier
Asst. to the Town Planner
Town of Freeport
30 Main Street
Freeport, ME 04032
(207)865-4743 ext. 107

www.freeportmaine.com



**Bernstein, Shur,
Sawyer & Nelson, P.A.**
100 Middle Street
PO Box 9729
Portland, ME 04104-5029

T (207) 774-1200

F (207) 774-1127

Philip R. Saucier
(207) 228-7160 direct
psaucier@bernsteinshur.com

May 7, 2019

Caroline Pelletier
Planning Department
Town of Freeport
30 Main Street
Freeport, ME 04032

Re: Young's Lane Subdivision

Dear Caroline:

You have asked me to respond to number of questions related to the Project Review Board's review of the proposed Young's Lane Subdivision ("the Project").

The proposed Project is a residential, open space subdivision with a combination of single family and two family dwellings in the Rural Residential I Zoning District. Prior to applying for subdivision review, the developer of the Project brought approximately 4,500-5,500 cubic yards of fill material to the property. I understand that the developer intends to process the material on-site to use for the construction of a road for the Project if final subdivision approval is granted by the Project Review Board.

Your questions and my answers are below:

1) Is Section 427: Mining and Extraction Overlay District "MEOD" of the Freeport Zoning Ordinance applicable to the application?

In my view the MEOD does not apply to the Project.

When interpreting the provisions of an ordinance, the Maine Law Court construes the ordinance reasonably "considering its purposes and structure and to avoid absurd or illogical results" and considers the general structure of the ordinance as a whole. *Olson v. Town of Yarmouth*, 2018 ME 27, ¶ 11, 179 A.3d 920, 924; *Wister v. Town of Mount Desert*, 2009 ME 66, ¶ 17, 974 A.2d 903, 909.

Pursuant to Section 302 of the Zoning Ordinance, the official zoning map is the final authority as to the current zoning status of property in the Town. The current Zoning Map on the Town's website, last amended on February 26, 2013, does not show any areas zoned as within the MEOD. Only the Town Council, after a public hearing by the Planning Board, may zone an area to be within the MEOD and amend the Zoning Map. *See* Section 302 and 427(A).

Further, even if the property was within the MEOD, the overlay district applies to the "excavation, processing, and storage of mineral deposits in locations" that are compatible with surrounding land uses and the general character of the area, among other purposes. Section 427(A). While excavation and processing uses are listed as separate permitted uses in the MEOD, it is reasonable to interpret the MEOD as applying to the processing of earth materials excavated on-site; any "processing uses" permitted in Section 427(B)(5) must logically be associated with on-site excavation since only 33% of aggregate processed at a site may be brought in from a location outside the site while the rest must come from on-site excavation.

This view is consistent with other provisions in the ordinance, including that minimum lot area in the MEOD is determined in part by the "maximum area of extraction" and that the requirements of Section 509 be met. Section 509, entitled "Extraction," regulates "excavations and their accessory uses" including associated processing operations, and specifically exempts "excavation necessarily incidental to construction, alteration or grading for which a building permit or other construction permit has been issued by the Codes Enforcement Officer" and "excavations and fill incidental to construction."

2) Is Section 509: Extraction of the Freeport Zoning Ordinance applicable to the application?

In my view Section 509 does not apply to the Project. Any "excavation necessarily incidental to construction, alteration or grading for which a building permit or other construction permit has been issued by the Codes Enforcement Officer" and "excavations and fill incidental to construction" are exempted in Section 509(D)(2); see answer #1 above.

3) Are you aware of any other Sections of the Freeport Zoning Ordinance or Subdivision Ordinance that would prohibit the processing of the material on-site if Subdivision approval were granted?

I am not aware of any provision that would prohibit the processing of the material on-site for the purpose of constructing an approved subdivision road. The Project would of course still need to comply with any relevant performances in the Zoning and Subdivision Ordinances.

4) The State of Maine Well Drilling Rules and State of Maine Subsurface Wastewater Disposal Rule set standards for the required distance between wells and septic system components, setbacks from property lines, etc. In this case, some of the proposed disposal fields are shown 10 feet from the property line, thereby creating “well exclusion zones” that extend beyond the applicants property line. Are the “well exclusion zones” something that is regulated and not allowed to extend beyond the property line on which the septic component is located on? Furthermore, per the State rules, are these “well exclusion zones” considered a “septic system component” and subject to setbacks such as a septic tank and/or leach field would be?

The Maine Subsurface Wastewater Disposal Rule (Table 7B) rule contains setback requirements for first-time subsurface wastewater system from potable water supplies that range from 100-300 feet depending on the size of the system and must also be set back between 10-20 feet from a property line; the Maine Well Drilling Rules (Section 400.2) contain similar setback distances for locating water supply rules from wastewater disposal fields. The rules regulate where a new wastewater disposal system or well can be located and how far they must be setback from existing systems; the term “well exclusion zone” does not appear in either of the rules.

The definition of “subsurface wastewater disposal system” in Section 14 of the Wastewater Rules means “any system designed to dispose of waste or wastewater on or beneath the surface of the earth; including, but not limited to: septic tanks; disposal fields; legally existing, nonconforming 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. §414, any surface wastewater disposal system, or any municipal or quasi-municipal sewer or wastewater treatment system.” In my reading of the above definition, the “system” is comprised of the physical structures and materials – the required setback distance is not part of the “system” but instead simply regulates where the system may be located.

5) If final subdivision approval is granted (and any conditions are met, etc.), do you feel that a separate fill permit would also be required to construct the road and site improvements per Section 525. Filling of Lands and Creation of Ponds of the Freeport Zoning Ordinance?

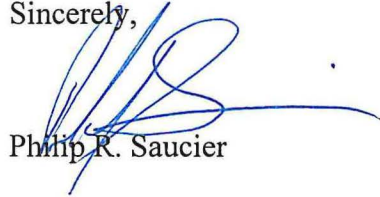
Under Section 525(A)(2) of the Zoning Ordinance, “filling necessarily incidental to construction, alteration or grading for which a building permit or other construction permit has been issued by the Codes Enforcement Officer” is exempt and does not require a fill permit.

Caroline Pelletier
May 7, 2019
Page 4

Finally, and as a general comment, the Project Review Board has the inherent authority to attach reasonable conditions to any approval. Any such condition must be reasonable, related to the relevant performance standards, and based on evidence in the record.

Please let me know if you have any further questions.

Sincerely,



Philip R. Saucier

PRS/ree



TOWN OF FREEPORT
Code Enforcement Office
30 Main Street, Freeport ME 04032
ph: 865-4743 ext. 102 fax: 865-0929
nadams@freeportmaine.com

Date: December 27, 2018
To: Donna Larson, Town Planner
CC: Justin Fletcher, Developer
From: Nicholas L. Adams, CEO
Re: Young's Lane Subdivision, MBLU (026004A 000)

Mr. Fletcher received two building permits from my office, the first permit was issued in April of 2018 to "Construct A new shed dormer on existing house, demolish outbuilding and construct a new 24' x 24' detached unconditioned garage. See plans". The second permit was issued in September of 2018 to "Amend Permit BP-18-156, tear down existing house and reuse foundation, attach 24' x 24' garage with 14' 6" x 23' breezeway. No additional bedrooms, see plans"

On August 20, 2018 I received a complaint that thousands of yards of material had been hauled onto the site and that Mr. Fletcher was starting work on a subdivision road. I visited the site that day and concluded that thousands of yards of material had in fact been hauled onto the site and stockpiled. There were no indications that the fill was be used for construction of a road or for a subdivision, merely that the fill was stockpiled on site.

Neither building permit was issued for constructing a road or for a subdivision. It was my opinion from my August 20th inspection that the fill was not associated with a building permit, the fill was most likely going to be used for road construction of a potential subdivision that I was aware Mr. Fletcher was planning on pursuing.

Therefore, on August 20th I wrote the following email to Mr. Fletcher and his contractor:

"As you are aware, we have received several complaints about the filling off Young's Lane. Given that the filling is in excess of 200 yards and not associated with any permits the filling is a violation of the zoning ordinance. It's my understanding with speaking with Donna that Justin plans on using this fill for a proposed subdivision in the future.

This being said, if the fill is for the proposed subdivision, then the material may remain for a period not to exceed one year, however the entire fill area need to have proper erosion control installed within two days from the date of the email.

No additional fill shall be hauled into the site and there shall be no processing of the fill material. If material continues to be hauled into the site or if the erosion control is not installed or if the material is processed onsite, I will be required to issue a Notice of Violation and order to correct. Please contact me when the site is stabilized and all erosion control devices have been installed. Furthermore, if after a year there is no subdivision approved by the Board, then the material must be removed and all disturbed areas shall be re-vegetated.

Let me know if you have any questions or concerns."

That day, Mr. Fletcher and his contractor stopped work. Erosion control was installed the next day. Since then, no additional material has been hauled onto the site (other than for the permits listed above) and the material does not appear to have been disturbed, (other than to gain access to remove the old greenhouse and miscellaneous trash/debris).

There is some confusion between several interested parties on what the next steps are for Mr. Fletcher. As the CEO for the Town I'm required to enforce the Zoning Ordinance, and if I find that a property is in violation of the Zoning Ordinance then I must notify the parties and how to correct the violation. As stated above, I notified Mr. Fletcher that he was in violation and that he must stop work, install erosion control, and apply for Subdivision approval (Because this is his intent).

Mr. Fletcher has done exactly what I asked him to do to this point. He stopped hauling the material that day; he has installed erosion control, and is seeking Subdivision approval. In addition to applying for subdivision approval, Mr. Fletcher may have originally applied for an after the fact filling permit. An after the fact filling permit was not a requirement from my office; filling associated with permits are exempt from the filling section (525.A.2) of the Zoning Ordinance. In my opinion and as indicated in my email, because the material is intended to be used in conjunction with the Subdivision he is only required to apply for Subdivision approval.

Hauling material onto the site and then processing the material or even processing material from the site is common when constructing a roadway for a new Subdivision. Mr. Fletcher is aware that he cannot process any of the material that is currently onsite or bring any additional material onto the site without proper permitting from the Town, which in this case would be Subdivision approval. Another option is that Mr. Fletcher could remove all the material onsite and haul to a conforming location. Mr. Fletcher cannot use the material for construction of any portion of the infrastructure of the proposed Subdivision prior to approval, however if the existing material onsite is impacting work under the current building permits that material could be moved within the site.

If Mr. Fletcher plans on using the material for a use other than for the Subdivision, then he would be required to apply for approvals under separate provisions of the Zoning Ordinance, however at this time I cannot confirm which sections of the Zoning Ordinance would apply because there is no pending application for such use.

This memo is not appealable to the Board of Appeals as this memo is not a formal enforcement of the Zoning Ordinance.

Let me know if you have any questions or concerns.

Caroline Pelletier

From: Adam Bliss
Sent: Tuesday, September 10, 2019 3:53 PM
To: Caroline Pelletier
Subject: RE: Falcon Way Subdivision revision

Hi Caroline,

I approve the Falcon Way stormwater revisions because the ponds are sized appropriately and can accommodate the slight increase in building footprint. The stormwater management plan reports that 1,475 square feet of impervious roof was assumed in the water quality and quantity analysis. The increase from 1,416 to 1,800 square feet of building footprint is acceptable since all other criteria (e.g. driveways and lawns) remain at or below the assumed thresholds. The developed areas will be enforced as they relate to building permits and certificate of occupancies.

Thank you,

Adam

Adam S. Bliss, P.E.
Freeport Town Engineer / Public Works Director
abliss@freeportmaine.com
207.865.4743 x106

Freeport Town Hall
30 Main Street
Freeport, Maine 04032

From: Adrienne Fine <adrienne@terradynconsultants.com>
Sent: Wednesday, July 31, 2019 1:43 PM
To: Caroline Pelletier <CPelletier@freeportmaine.com>; Adam Bliss <abliss@freeportmaine.com>
Cc: Jessica Brown <Jessica@terradynconsultants.com>; john@johnlibbyconstruction.com
Subject: Falcon Way Subdivision revision

Hi Caroline and Adam,

The approved Falcon Way Subdivision had a maximum footprint restriction listed on the subdivision plan for purposes of stormwater management of 1,416 SF. John and I discussed this before finalizing the plan but upon further design of these lots John has found that the actual maximum footprint needs to be 1,800 SF per lot to include all porches. We are proposing a revision to the subdivision plan just to revise the note that states this number (Note #15). None of the other plans have changed as a result of this.

I reviewed the stormwater analysis and found that the UDSFs are adequately sized, the treatment percentages are still greater than required, and the peak flowrates remain relatively the same and below the pre-development rates. Attached is a letter summarizing the stormwater revisions and findings.

Also attached is a PDF draft of the revised subdivision plan.

What is the next step? Is this just a staff review or do we need to come back to the board? How/when can we get the revised subdivision plan signed by the board for re-recording?

I will be out of the office tomorrow 8/1 and Friday 8/2 but returning on Monday 8/5. If you need printed paper copies of this letter or revised subdivision plan for review please let myself and Jessica know (copied) and she could bring hard copies in tomorrow.

Thank you,
Adrienne

Adrienne Fine, P.E.
Terradyn Consultants, LLC
(207) 322-1223

Caroline Pelletier

From: Adam Bliss
Sent: Tuesday, September 03, 2019 5:20 PM
To: Caroline Pelletier
Subject: Devine Capital, LLC: 6 and 8 Desert Road

Hi Caroline,

I have reviewed the Site Plan for the proposed project at 6 and 8 Desert Road. The following comments are provided for consideration before the Project Review Board Conceptual Plan application.

1. The project is located within the Merrill Brook Watershed. This watershed is listed as threatened by the Maine Department of Environmental Protection. I recommend that the applicant explore Low Impact Development design techniques and disconnect impervious areas wherever possible to help mitigate the potential for stream degradation downgradient of the project, similar to what has occurred within both Concord Gully Brook and Frost Gully Brook Watersheds. It has been observed that high frequency storm events (e.g. 1" storm) has eroded the streambanks within these watersheds.
2. The applicant should provide a memorandum that documents the anticipated traffic volumes as a result of this project and if future phases are proposed requiring a Traffic Movement Permit.
3. I note that the Exit 20 bridge rehabilitation project is expected in one to three years. This project will include a pedestrian connection along Desert Road from the Route One intersection to the bridge and from the bridge headed west. The applicant might benefit by connecting a sidewalk into this planned work and market this connection as means for their tenants to use transit facilities, and utilize business services within Freeport.

I am happy to answer any questions you or the Project Review Board may have.

Thank you,

Adam

Adam S. Bliss, P.E.
Freeport Town Engineer / Public Works Director
abliss@freeportmaine.com
207.865.4743 x106

Freeport Town Hall
30 Main Street
Freeport, Maine 04032