

City of Ellsworth
Planning Board Meeting
Minutes — Wednesday, August 8, 2018

Chairman John Fink, Secretary Mike Howie, and board members Roger Lessard, John DeLeo and Lisa Enman were present. Alternate member Rick Lyles was unable to attend the meeting due to a prior commitment. The seventh seat on the board (second alternate) is currently vacant.

Planning Board member attendance, five members present, one absent

City staff present included Planner Michele Gagnon, Code Enforcement Officer Dwight Tilton, Public Works Director Lisa Sekulich, Fire Inspector Mike Hangge and Assistant City Planner Steve Fuller.

Five city staff members in attendance

1) Call to Order

Chairman John Fink called the meeting to order at 7:00 PM. He had each of the five board members present introduce themselves.

Meeting called to order at 7:00 PM

Prior to moving on to the next agenda item, Fink asked for a minute of silence in honor of the late Darrell Wilson. Wilson, who served on the board for 11 years and was most recently its vice chairman, died unexpectedly on Saturday, July 21. A minute of silence was observed.

Board, audience observes a minute of silence for the late Darrell Wilson

2) Adoption of Minutes from the July 11, 2018 meeting

Board member John DeLeo made a motion to adopt the minutes from the July 11, 2018 meeting. Board member Roger Lessard seconded the motion. There was neither discussion nor any suggested corrections, and Fink then called for a vote. The motion carried unanimously (5-0).

Adoption of minutes from July 11, 2018 regular meeting: ADOPTED (5-0)

3) Final Plan Review for a Modification to an Approved Minor Subdivision (Planfile 44-77) titled Our Way Development/Holt Industrial Park for Dan Quinlan.

The proposal is to separate an existing residential building into two buildings and create a new lot in the process, increasing the total number of lots in the subdivision from four to five (which changes the classification to Major Subdivision). The proposal would not create any additional residential units. The project is located on 1.56 acres at 204 Bucksport Road on Tax Map 26, Lot 2 in the Urban Zone. The proposal would divide that lot into two separate parcels, one 0.81 acres in size and the other 0.75 acres.

OUR WAY DEVELOPMENT /HOLT INDUSTRIAL PARK for Dan Quinlan

a. PUBLIC HEARING, DELIBERATION, FINDING OF FACTS AND CONCLUSION.

Steve Salsbury was present to represent the applicant, and he opened by noting changes that had been made to the application since the board's last review of the application in July. Those included changing the classification of the project from minor subdivision to major subdivision on the application itself, providing a copy of the correct approved and signed existing subdivision plan (approved and signed by the board on

Steve Salsbury represents applicant, explains changes made since last time. Changes include fixing classification

December 6, 2017), and revising the tax map and lot numbers on the new plan (the one before the board tonight) at the request of city staff. Salsbury explained the map and lot numbers shown on the plan tonight “reflect the map and lot numbers which will be on a succeeding revision of the [city’s] tax maps.”

Fink asked for questions from the board. Hearing none, Fink asked Salsbury, “Has this ever happened before?” Salsbury replied, “It may have, I don’t recall.”

At 7:04 PM, Fink opened a public hearing. Although there were members of the public present, none of them wished to speak on this application, and the hearing was subsequently closed.

Fink, noting that the board determined last time that the application was complete, asked his colleagues if they were satisfied with what they had in front of them tonight and/or if there were any parts of the application they still had questions about. Fink then invited someone to make a motion.

Board member Mike Howie made a motion to approve the final plan for a modification to an approved minor subdivision (Planfile 44-77) titled Our Way Development/Holt Industrial Park for Dan Quinlan. Fink asked if he was making the motion to approve based on the requirements of the Subdivision Ordinance (Chapter 28) and Site Plan article in Chapter 56 (Unified Development Ordinance), and Howie said he was. DeLeo seconded the motion. Fink asked if there was any discussion, and there was none. The motion then carried unanimously (5-0) at 7:05 PM. Salsbury noted he had mylars with him to be signed.

4) Final Plan Review for a Major Use Site Development and Major Subdivision titled Washington LUXE for Jonathan Bates. The proposal is for two, 12-unit, three-story buildings with a total of 24 apartment and/or short-term rental units. The project is located at 29 Washington Street on two parcels totaling 1.19 acres (Tax Map 130, Lots 26 and 30), in the Downtown Zone.

a. PUBLIC HEARING, DELIBERATION, FINDING OF FACTS AND CONCLUSION.

Steve Salsbury, Chip Haskell from CES and Jonathan Bates (the applicant) were all present at the meeting. Salsbury noted that some revisions (relating to stormwater) were supplied on Monday, two days prior to the board’s meeting, which were supplied to board members Monday evening. He noted that submission included all the changes that Haskell and Nancy St. Clair, who completed the peer review that the board requested at its last meeting, made relating to stormwater. Salsbury also noted that Haskell supplied board members at the meeting with two

of project, providing correct prior plan and revising tax map/lot numbers

No questions from the Planning Board

Public hearing opened and closed at 7:04 PM (no one offers any comments)

Fink offers board members a chance to comment, and ask any questions that they may have

OUR WAY DEVELOPMENT/HOLT INDUSTRIAL PARK: APPROVED, 5-0

WASHINGTON LUXE for Jonathan Bates

Steve Salsbury, Chip Haskell and Jonathan Bates present for project

Salsbury goes over what is new material for tonight’s meeting

letters from tenants who have lived next door at his adjacent property and project (Washington Lofts, which is just downhill from the proposed Washington LUXE). Salsbury also referred to a July 25 letter from Fire Inspector Mike Hangge regarding fire department access to the property. Salsbury said his goal was to make a record of what board members have in front of them.

Before questions began, there was brief discussion of the Red Sox game taking place that night (Fink noted Salsbury had expressed an interest in seeing the game, and Salsbury noted he would be able to check the score periodically on his phone during the meeting — the Red Sox went on to beat the Blue Jays that night, 10-5).

Questions from the board opened with DeLeo asking about parking. He said he wasn't sure the 1.5 spaces/unit (36 spaces for 24 units) at Washington LUXE was sufficient, even though it meets the requirement of the ordinance. He noted Bates has a nine-unit apartment complex on Route 1A where two parking spaces are provided for each unit. He noted there are additional parking spaces there, too, to the point where there are almost effectively three spots per unit. DeLeo questioned if the proposed Washington LUXE parking is sufficient. In response to a question from Salsbury, DeLeo said he had never seen all the parking spaces at the Bangor Road location full. DeLeo asked Bates if he foresaw any problems with 18 parking spaces per 12-unit building at Washington LUXE. Bates noted his Bangor Road apartments are 3-bedroom, 2-full-bath units. He called that project a "different animal" than Washington LUXE.

DeLeo said time would tell if the proposed parking is adequate at Washington LUXE and acknowledged he might be wrong for worrying. He said he was especially concerned about parking in winter months, with snowbanks and when snow might encroach on marked parking spaces. He asked where cars would park if there was a parking shortage for some reason and wondered if they might park out on Washington Street. Bates said given the project's location in the downtown area of the city, tenants may find that one car is sufficient for them because they can walk to where they want to go.

DeLeo referenced discussions he had with city staff about parking. He said city staff had said to him that if the parking proves to be insufficient, that is the developer's problem. DeLeo said he does not see it as only the developer's problem, but the city's problem, as well — because it could mean parking in the streets, blocking access for fire trucks, etc. DeLeo said he "really cringed" when city staff said it was the developer's problem. Salsbury said tenants will get mad and move out if there is not enough parking. He said there are no on-street parking opportunities in that area. DeLeo said parking is not prohibited on that street under city ordinance. DeLeo said he hopes his concerns prove unfounded.

Continuation of overview from Salsbury of what board members have in front of them

Red Sox game is subject of some discussion

DeLeo questions whether proposed parking is sufficient, though he notes it meets the ordinance

Discussion of parking at Bates' Bangor Road apartment complex

Concern about parking in winter

Bates: Project's location in downtown means parking is not as big of an issue as it might be elsewhere in Ellsworth

DeLeo does not like city staff saying any parking issues are the developer's; he says it is also an issue for the city, as well, because of potential ramifications

Howie said he had concerns about parking, too, although he noted as DeLeo had that what is proposed meets the requirements of the city's parking standards. He said it is more of an ordinance issue.

Howie has concerns about parking, too

DeLeo asked Bates if he proposes to have designated parking for each unit, and Bates said "that will probably be how we do it."

Question about designated parking

Fink said because of the ordinance requirements regarding parking spaces, the Planning Board does not have the authority to require more parking be provided. He said while there may be an underlying issue with the ordinance, as others had suggested, it is beyond the board's authority to do anything else at this time.

Fink: Board cannot require more parking than what the ordinance itself requires

DeLeo asked for clarification of where guard rails and curbs will be put in place as part of this project. He said he had taken a ride out behind Bates' apartments on the Bangor Road and was surprised to find there was no guardrail there (where a steep drop-off exists). Bates said a guard rail is being installed in that location. Bates asserted that the embankment is "deceiving" and is not as steep as it looks. He estimated it is only an 11-foot embankment.

DeLeo has questions about guardrails and curbing; also another reference to Bates' Bangor Road apartments

Haskell went over to the large TV screen in the Council Chambers to point out on a projected site plan where the guard rail and curbing will be installed. Discussion continued between Haskell and DeLeo on the subject, in addition to where snow will be stored. Howie asked if utilities will be underground or overhead and Haskell said underground.

Discussion continues, including where snow will be put during the winter months

DeLeo asked a question about lighting, noting that former member Wilson had put a lot of work into the lighting standards during his time on the board. DeLeo referenced a lighting issue from the previous Planning Board meeting when an abutter (Joseph Cesario) who lives directly across from the Washington LUXE site (and entryway and exit) voiced concern about headlights shining into his house from cars leaving Washington LUXE. DeLeo noted the board works to ensure light does not trespass from a development onto neighboring properties, but wondered what could be done in a situation such as this.

DeLeo has questions about lighting and a neighbor across the street, with concerns about headlights shining into his house as vehicles exit from Washington LUXE

Bates responded by saying the project is in the downtown Urban Core of the city and said it was "physically impossible to avoid" light spillover such as that. "To say that you can't have lights coming from a car into another house is impossible to achieve in the downtown Urban Core," he said. After saying that, however, Bates said he had worked with Cesario and that the two of them had come up with a solution to his concern (though Bates did not specify during the meeting what that solution was). DeLeo said the abutter was in a unique situation and that he was "really glad" to hear that something had been worked out.

Bates says this is part of the nature of a project in the downtown

Also notes he has reached a solution with the neighbor

DeLeo noted he was also happy to see that Bates was talking with the neighbors, some of whom were unable to walk around the whole site due to challenging terrain and ground conditions, during the July 13 site visit. Bates said the neighbors seemed most interested in and concerned about the bank of trees running parallel to Washington Street, and Bates said his intent is to leave as many of those trees in place as is possible.

DeLeo then asked about sight distance. He noted that the applicant had removed some vegetation on the downhill side of the entrance/exit to achieve the required sight distance. He referred to a similar, previous situation on the Bucksport Road with The Village subdivision done by Roy Lietz, where wording was put in place to ensure that the required sight distance is maintained going forward. DeLeo wondered if something similar could be done in this case, as well.

Gagnon asked if the clearing Bates did was done on his property or within the city's right-of-way along Washington Street. Haskell and Bates said the clearing was probably done in both areas. Gagnon said a requirement could be put in place under city ordinance, with a requirement that sight distance be maintained on his land. Gagnon said the land that falls within the right-of-way will need to be maintained by the city itself. Bates said if ragweed grows up in the ditch, he will cut it down whether it is on his land or the city's (so that sight distance will not be impeded).

Gagnon said it could simply be a condition of approval that a visibility triangle (actually, a corner easement — see discussion later in the meeting, section 907.1 – H) be created and maintained at that location. The applicant and his representatives said doing so would not be an issue.

Howie said that both the comments from peer reviewer Nancy St. Clair and Haskell's response to those comments were "very helpful." He said a lot of questions he had were answered by those documents. Howie said he did have a question about the stormwater permit from the Maine Department of Environmental Protection. Haskell said it is a 14-day approval window (DEP has 14 days to respond from the day the application is submitted, he said, and if the applicant doesn't hear back from DEP in that time frame than the application is considered approved). Howie asked if DEP approval needed to be made a condition of approval by the Planning Board. Haskell noted there was a note on the plan saying that the permit will be secured before construction begins. Fink noted that such a condition was not necessary because if DEP turns down the application, the applicant would be "stuck" and unable to proceed.

Lessard asked if the applicant still intended to call his project an Airbnb-friendly facility, as was noted on some earlier materials and at a previous meeting. Bates said he was just going to call it an apartment building, and

Discussion of July 13 site visit, and the concern neighbors there had about trees along Washington Street

DeLeo asks about sight distance, particularly how it will be maintained in the future

Discussion of maintaining sight distance

What falls within the city's right-of-way and what falls in the applicant's property

Gagnon suggests possible condition of approval relating to sight distance

Discussion of stormwater issues: Howie found peer review and response comments helpful; also has questions about the DEP permit-by-rule approval process

Lessard asks about nature of rental units and lease agreements

said (as he had previously) that six months is the shortest lease he will do.

Fink said he had some questions regarding stormwater and the peer review report. He asked about summation point #1, and whether it was on the Washington LUXE property or the applicant’s abutting property (Washington Lofts). Haskell said it is on the latter property. He and Salsbury noted there is a proposed easement for Washington LUXE to send its runoff to that location and the associated rip rap.

Fink then asked about summation point #2, which is located on land owned by the abutting Straw Way housing development. Fink asked what there was to guarantee that access to that summation point would be “perpetual.” Haskell said access to that point was not necessarily needed, and he noted runoff from the Washington LUXE property is already going there, pre-development. He noted that the proposed stormwater plan called for reducing flow to that summation point. Fink asked what would happen if Straw Way were to change or alter that summation point in the future in a way that prevented the flow. Salsbury and Haskell noted that summation point is about 20 feet below the Washington LUXE parking area, and Haskell said he did not think there was much Straw Way could do to that summation point that would affect this project.

Fink noted summation point 3 is also on Straw Way’s property and asked if there was anything that could change there in the future. Haskell said he thought it was unlikely, and noted it is difficult to speculate what other people might do in the future that could impact this project. He noted any changes that might be made would have to make sure they did not result in blocking stormwater flow from the Washington LUXE property.

Haskell offered a general explanation of summation points. He said the location of a particular summation point in and of itself is not important, other than to offer a fair comparison between pre- and post-development.

Fink noted the ordinance (Article 10, Stormwater Management, etc.) says runoff post-development must not be more than the runoff that occurred pre-development. He noted that the stormwater plan before the board that night showed an increase at summation point #1, and that therefore, Fink said, it did not meet the ordinance. Haskell noted there is an exception in the ordinance that does allow for an increase, provided that the system is shown to be able to handle the expected increase.

Gagnon spoke and noted the ordinance also does not require water to be held back or retained if the conveyance structure in question can accommodate it. Gagnon said the city asked for some controls to be put in place, due to the steep grades of the site. Gagnon said the conveyance structure in question can accommodate the water because there is a decrease up the hill at the workforce housing project (Oriole Way). Fink

Fink asks about stormwater summation point #1

Fink asks about summation point #2 — it being on Straw Way housing development property, and what might happen to runoff going there in the future

Fink asks about summation point #3, Haskell responds

Haskell address summation points in general

Fink questions whether proposal meets pre- and post-development runoff requirements; and discussion of the exemption allowed

Gagnon speaks to ordinance; says board does not have to give separate approval to the exemption

asked if an applicant availing themselves of that exception is automatic or something that requires specific approval by the board. Gagnon said it is “pretty much automatic.”

At 7:28 PM, Fink opened a public hearing. First to speak was Roseanna Rich, who lives at Washington Lofts (Bates’ project that is adjacent to Washington LUXE). She said she watched the July 11 meeting on YouTube and that she wanted to come “and offer a different perspective than some of my neighbors.” Rich said she has lived at Washington Lofts for 16 months and that she loves living there. She gave Bates much of the credit for her positive experience there. She said the building is sound and gorgeous. She said she is excited about another space like that going up next door. She said she did not have some of the same concerns that her neighbors do. She said Bates and his crew are “honest, competent and respectful.” She invited questions from the board, but no one had any for her.

Nicholas Navarre of Ellsworth spoke next. He said he liked the density of the development. He said he would like to live in a city that had zero parking requirements. He said he did wish there was a designated space or corridor for pedestrians within the parking area, such as for children waiting for a school bus in the winter.

There being no questions from the board for Navarre and no other citizens who wished to speak, Fink closed the public hearing at 7:31 PM.

Lessard then asked for clarification of what a “snout,” with regard to stormwater management, is. The site plan identified locations for a couple of them. Haskell said it is essentially a hood that covers the pipe inside the catch basin, mounted against the wall of the catch basin itself. He said it serves to catch floatable material in the stormwater, while the stormwater itself goes underneath the hood and out through the pipe due to head pressure.

Lessard then asked a question about the diameter of a certain stormwater pipe and a difference between what is required under ordinance and what is proposed by the applicant (although the ordinance does allow for exceptions on that point). Haskell said in this case, the 12-inch diameter storm drainage pipe that is proposed (the ordinance generally calls for a minimum 15-inch diameter storm drainage pipe) “is more than enough to handle that amount of water.”

Returning to the subject of the “snouts,” Fink asked what happens to the solid material that they catch/deflect from entering the storm drain itself. Haskell said eventually, the catch basin itself should be cleaned out. He said the material will generally eventually sink to the bottom of the catch basin (where there is a sump) and is “unlikely to get suspended again.” He said the sump can then later be vacuumed out in order to be cleaned.

Public hearing opens at 7:28 PM

Roseanna Rich speaks positively of her experience at Jonathan Bates’ adjacent property, Washington Lofts

Nicholas Navarre speaks; likes density of the project, wishes there was more space for pedestrians

Public hearing closed at 7:31 PM

Lessard asks what a “snout” is in the context of stormwater management, Haskell explains

Question and answer about the diameter of a particular stormwater pipe and its relationship to requirements of city ordinance

Discussion of “snouts,” how catch basins are cleaned

Fink asked if the basin would be regularly maintained (cleaned), and Haskell said it would. The stormwater management plan for the project notes that this is the owner's responsibility to do so.

DeLeo asked about the stormwater that was previously exiting the property at summation points 3 and 4. He noted underground drainage has been added and asked if that new infrastructure grabs everything that had been heading to points 3 and 4 (in terms of runoff). Haskell said the new configuration captures everything within the paved area and sends it to summation point 1. DeLeo asked if that meant nothing was going off the property to the other summation points, and Haskell said nothing is going there from the paved area. He noted there is a grass slope that is still draining as it was previously, but said the runoff there was "drastically reduced" from pre-development. DeLeo said he was glad to see the new storm line had been added to accomplish this.

Gagnon spoke and called attention to the Technical Review Team memo, and particularly note 4 (regarding the drainage easement). She suggested it would be possible to make it a condition of approval that the proposed drainage easement be executed prior to the certificate of occupancy being issued. She asked Bates if he thought that was fair, and he said he did. She asked the Planning Board to consider that as a condition of approval.

Gagnon said the other condition of approval would be a corner easement regarding DeLeo's earlier comments and questions on sight distance. She referred to Section 907.1, Letter H, of Chapter 56/Unified Development Ordinance, which reads: "Corner Easements may be required to provide and maintain the safety sight distance." Gagnon said the idea would be for that to be on the site plan prior to the mylars being signed at a future meeting. She asked if that was acceptable to the applicant and there was no opposition.

Fink asked about the matter of Orange Street, a so-called "paper street" off of Washington Street on the applicant's property that was an issue raised at previous meetings. As part of the TRT memo shared with the board, an opinion from the city's legal counsel Ed Bearor was provided on that matter. Gagnon said this situation was "very similar" to the Straw Way situation in 2010 with the Straw Way housing development. DeLeo asked where there were any maps that had Orange Street depicted on them, "because I've never heard of it." "That's the point," Gagnon said. Discussion continued on the subject. Gagnon read aloud the closing sentence of Bearor's emailed opinion: "In closing, I will add that I am unaware of any action previously taken by the city of Ellsworth to preserve incipient rights in these 'paper streets' as authorized by state law, and the likelihood that the City has any legal interest in this strip of land shown as the access drive on the plan for Washington LUXE is nil."

DeLeo has questions about summation points #3 and #4, and how changes to the stormwater plan presented for this meeting affect those summation points

Gagnon calls attention to Technical Review Team memo, and note about proposed drainage easement

Corner easement also mentioned as a possible condition of approval

Fink asks about mention of Orange Street, a "paper street" on the applicant's property

Gagnon refers to opinion from the city's attorney Ed Bearor advising no indication city has any legal interest in Orange Street

Fink asked if the city would be prepared to formally relinquish any interest in the paper street, and Gagnon said she did not think the city was interested in taking any action either way. She said Assistant City Planner Steve Fuller had discovered a similar opinion on Straw Way when that matter was reviewed in 2010. She said from what was found in city files nothing was done with Straw Way in 2010 and she didn't think anything would be done here, either, though she also noted she was not the city attorney.

Lessard asked Gagnon about the workforce housing (Oriole Way) project's stormwater plan, and how this applicant can get a credit (reduction) on their project based on what was done uphill with Oriole Way. Gagnon said that when the stormwater design was done for that project, some of the stormwater that had been going to Washington Street (pre-development) was redirected away from the street (post-development). In that way the amount of post-development runoff was less than the pre-development amount. Lessard asked if that meant the applicant (Bates) could take that reduction credit from that project (Oriole Way) and use it for his own. She said based upon the city's knowledge, the conveyance structure along Washington Street has the capacity to handle the runoff.

At 7:39 PM, DeLeo made a motion to accept the final plan for a major use site development and major subdivision titled Washington LUXE for Jonathan Bates. DeLeo read the description of the project as presented on the agenda for the meeting, and continued his motion by noting the board finds the application meets Section 607 of the Unified Development Ordinance (Standards and Criteria Governing Site Development Plan Review — Final Plan Meeting), and as applicable, Article 8 (Performance Standards), Article 9 (Street Design and Construction Standards), Article 10 (Stormwater Management Design and Construction Standards), Article 11 (Parking Standards), and that the project is an allowed use in the zone. As conditions, DeLeo added the following, that under section 907.1.H of the Unified Development Ordinance, a corner easement for the purpose of maintaining sight distance to the west, be added to the mylar site plan prior to signing; and, separately, that the proposed drainage easement be executed and recorded at the Hancock County Registry of Deeds prior to the issuance of a certificate of occupancy. Gagnon asked that the board use the word "approve" instead of "accept," and DeLeo changed his original wording to "move to approve." Howie seconded the motion. There was no additional discussion, and Fink called for the vote, which was unanimous (5-0) in favor of the motion.

Gagnon does not know of any city plan for addressing paper street matter in future

Talk of Straw Way issue from 2010

Lessard asks for explanation of how stormwater credit works in this case

**WASHINGTON LUXE:
APPROVED, 5-0**

5.) Signing of Mylars & Adjournment

Fink made a motion to adjourn the meeting after the mylars (for Our Way) were signed. DeLeo seconded the motion and it carried unanimously (5-0). The meeting adjourned at 7:44 PM.

Minutes prepared by: Steve Fuller, Assistant City Planner

Minutes approved by Ellsworth Planning Board on October 3, 2018:

10/3/18
Date


Mike Howie, Secretary
Ellsworth Planning Board

**Mylars signed for
Our Way**

**Meeting adjourned
at 7:44 PM**

*Agendas and minutes
posted on the city of
Ellsworth's website:
ellsworthmaine.gov*