

**City of Ellsworth
Planning Board Meeting
Minutes — February 5, 2020**

Vice-Chairman John DeLeo, Secretary Roger Lessard, Board Member Rick Lyles, and Alternate Member Marc Rich attended the regular meeting of the Ellsworth Planning Board. Vice-Chairman John DeLeo presided over the meeting in place of Chairman John Fink (absent).

Four board members present

City Planner Jef Fitzgerald, Fire Inspector Mike Hange, City Manager David Cole, Code Enforcement Officer Dwight Tilton, and Development Services Coordinator Kerri Taylor also attended the meeting.

Five staff members present

1.) Call to Order

Vice-Chairman John DeLeo called the meeting to order at 6:30 PM.

Call to Order

2.) Adoption of Minutes from the January 8, 2020 meeting. Roger Lessard moved to approve the minutes. Rick Lyles seconded the motion, and with no discussion, the motion passed unanimously **(4-0)**.

Adoption of minutes

3.) Preliminary Plan Review for a Revision to an Existing Major Subdivision entitled Joy Woods (Planfile 47-9 dated November 5, 2019) for Lawrence Piazza. The amendment would split a 9.93 acre lot into two lots, creating lot 6A (Tax Map 133, Lot 14-1) consisting of 7.82 acres and lot 6B (Tax Map 133 Lot 14-1-1) consisting of 2.11 acres. All of the subject land is in the Urban Zone.

Revision to subdivision entitled Joy Woods Introduction

Vice-Chairman John DeLeo clarified that Agenda items #3 and #4 are being reviewed as one item.

Malcolm Harriman, licensed land surveyor, represented Dr. Lawrence Piazza.

Mr. Harriman addressed the board; he stated that he had contacted the State regarding Critical Natural Areas and Historical Places by letter. He also spoke with the Maine DOT regarding entrance permits for possible future development on the subject lots within the subdivision. He explained that the City would be the body governing any entrance permits at the subdivision location as the DOT's responsibility stops at Christian Ridge Road. Mr. Harriman explained that he added a right of way to the existing road in order to access the back lot of the property.

Applicant Presentation

Mr. DeLeo inquired into the proposed location of the right-of-way. Mr. Harriman explained creating a right-of-way on the existing entrance is a simple solution to accessing the back lot. City Planner Jef Fitzgerald added that Maine DOT has been reluctant to have multiple entrances along the subject land. City Staff concluded it would be wise to utilize a right of way to the back lot. The DOT confirmed that the shared entrance would suffice as

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long as the lot is vacant, and, if developed, the development did not produce a significant increase in traffic. The applicant also has the option to apply for another entrance in the future if necessary. Rick Lyles asked Mr. Harriman if he had contacted the DOT about the right of way and future entrances. Mr. Harriman explained he spoke to the person at the DOT that generally inspects the site and he accepted the right of way and informed him that the City would handle future entrance permits, unless a future development will create a lot of traffic, in which case the DOT will have to get involved.

Mr. Fitzgerald added that the right of way is larger than most right of ways to accommodate a wetland in that location. By creating a larger right of way, the applicant is able to get around the wetland and will not have to build a new driveway. Mr. DeLeo pointed out the proposed right of way is 74 feet wide and subsequently asked if a typical right of way is 50 feet. Mr. Harriman clarified that he purposely made the right of way 74 feet wide to create extra room around the edge of the wetland.

Mr. DeLeo questioned if the back lot were to be developed in the future would the applicant be able to use the current driveway for the new development. The applicant, Dr. Piazza addressed the question; he explained that he had conducted a strategic plan for the whole ten acres of land. Dr. Piazza explained that he owns a 2-acre parcel next to the lot closest to downtown Ellsworth. If he were to develop the remaining lot DOT said he could build an entrance on the downtown Ellsworth side. He would have to apply for an entrance permit, but it would be justified based on traffic flow. Dr. Piazza stated if something significant were developed, it would be safer to put another road entrance rather than using the right of way and sharing an entrance with the medical building. However, they utilized the right of way to demonstrate that in fact he has legal access to the residual property.

Mr. DeLeo voiced concerns about the right of way to Lot 6A going through the parking lot of the medical office and possibly affecting parking spots. Dr. Piazza explained that there is no parking where the right of way turns and passes the wetlands. He also had mitigation looked at if he were to put in a road on the other side of the wetlands.

Mr. DeLeo inquired about the 25-foot utility easement shown on the plan. Dr. Piazza explained when the medical office was constructed the builder ran conduits along the property line. He wanted an easement to be able to utilize those conduits underground to access water, sewer, and three-phase power to Lot 6A. Mr. DeLeo asked about the 10-foot setback shown on the plan to ensure no conflicts arise because the utility easement and the setback appear to be in the same place. Mr. Fitzgerald answered that the 10-foot setback is for above ground structures. Mr. Harriman added that the 25-foot utility easement is to allow for maintenance and repair work.

Vice-Chairman DeLeo opened a public hearing at 6:42 PM for the **Preliminary Plan Review for a Revision to an Existing Major Subdivision entitled Joy Woods**. With no one coming forward, he immediately closed the Public Hearing.

Public Hearing

Rick Lyles made a motion that the **Preliminary Plan for a Revision to an Existing Major Subdivision entitled Joy Woods** was complete. Roger Lessard seconded the motion and, with no further discussion, the motion passed unanimously (4-0).

Preliminary Plan for a Revision to Joy Woods Subdivision: Complete

4.) Final Plan Review for a Revision to an Existing Major Subdivision entitled Joy Woods (Planfile 47-9 dated November 5, 2019) for Lawrence Piazza. The amendment would split a 9.93 acre lot into two lots, creating lot 6A (Tax Map 133, Lot 14-1) consisting of 7.82 acres and lot 6B (Tax Map 133, Lot 14-1-1) consisting of 2.11 acres. All of the subject land is in the Urban Zone.

Vice-Chairman DeLeo opened a public hearing at 6:44 PM for the **Final Plan Review for a Revision to an Existing Major Subdivision entitled Joy Woods**. With no one coming forward, he immediately closed the Public Hearing.

Public Hearing

Rick Lyles made a motion to approve the **Final Plan for a Revision to an Existing Major Subdivision entitled Joy Woods**. Roger Lessard seconded the motion and, with no further discussion, the motion passed unanimously (4-0).

Revision to Joy Woods Subdivision approved

5.) Proposed amendments and additions to Chapter 56 Unified Development Ordinance, Article 3 Zoning Districts, Article 14 Definitions, and Article 8 Performance Standards. The proposed amendments will create additional categories and allowable uses in Article 3 Section 307 Table of Land Uses, create additional entries in Article 14 Definitions, and will add the following Sections to Article 8 Performance Standards: Section 823 Solar Energy Systems, Section 824 Energy Storage Systems and Section 825 Facility Operations, Maintenance, Decommissioning and Abandonment. (Tabled from the January 8th meeting.)

Mr. Fitzgerald addressed the board to present the application; he began the presentation by explaining there have been revisions to the original application that was submitted and subsequently tabled at the January 8th meeting. Mr. Fitzgerald explained there was only one change to the Table of

Applicant Presentation

Land Uses. The Power Generating Facilities Stand Alone category has been removed. It has also been removed from the proposed Definitions as well as any definition related to a power generating facility. A couple of extra definitions were added to clarify the difference between an energy storage system accessory and an energy storage system stand-alone. The solar energy small scale, medium scale, and large-scale definitions were simplified. The system size will be based on the square footage of the solar panels. Mr. Lyles questioned if these definitions are standard for the industry. Mr. Fitzgerald explained that in terms of classifying these as small scale, medium scale, and large-scale this is the closest to a standard he has found.

Mr. DeLeo inquired if there are currently any solar energy systems in Ellsworth that would be considered larger than a small-scale. Dwight Tilton answered that Ellsworth has one commercial building with over one hundred panels. Mr. DeLeo then questioned if there are any residential systems that would be large enough to fit into the medium-scale category. Mr. Tilton answered that there are not. Mr. Lyles asked if the proposed regulations are meant to cover new development, existing structures, solar farms, or all solar related projects. Mr. Fitzgerald answered that the regulations are intended to cover all solar energy related projects. The proposed ordinance classifies small-scale systems as minor use and medium and large-scale systems as major use. Mr. Lyles questioned if someone were to install solar panels onto an existing building would they be required to submit an application to the Planning Board or to Code Enforcement. Mr. Tilton answered that if it is under 100 panels it would go through the Code Enforcement Office. Mr. DeLeo questioned staff if someone wanted to install 1,751 square feet of solar panels, whether on an already existing structure or not would it come before the Planning Board? Mr. Fitzgerald answered that, yes, anything over 100 panels will require Planning Board approval.

Mr. Fitzgerald continued on to address the revisions to the performance standards that were made since the previous meeting. Mr. Fitzgerald explained subsection B outlines height restrictions, stating, "Solar panels up to three feet above a roof on which they are mounted may be ignored in building height measurements unless the panels block a scenic view or create a nuisance condition". Mr. DeLeo offered that the wording seemed subjective, as people can interpret what creates a nuisance condition very differently. Mr. Lyles asked if scenic view and nuisance condition are defined somewhere else in the ordinance. Mr. Tilton answered that nuisances are covered under Title 17 in the state statues and they are also referenced in the Uniform Development Ordinance. Mr. Tilton said he is not fully clear if those statutes cover the blocking of a neighbor's sunlight or pertain to shade, but those are good concerns to address. Mr. Tilton explained that the large solar arrays would most likely not be near residential homes. Developers that are currently interested in Ellsworth are looking to build in rural areas. The only district he can foresee having issues is in the downtown zone due to limited setbacks. Mr. Lyles asked if height restriction includes mechanical devices on

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top of the building. Mr. Tilton explained that antennas and similar devices are not included, the height is determined by the ridge of the building itself. He also explained that there are not any solar arrays in Ellsworth that are built up more than 6 to 8 inches off the roof of the building. Mr. Lyles suggested possibly changing the scenic blocking to above the ridgeline.

Mr. Hangge noted areas of the Building Code and NFPA that pertain to height above the roofline and that given those provisions, 3 feet seems reasonable for solar panel height on roofs.

Mr. DeLeo voiced more concern about the scenic view mentioned in Subsection B. Mr. Fitzgerald agreed that it is a subjective standard to some extent. However, people would have to make a strong case that a solar array is interfering with something or creating a nuisance. He explained that some deference is being allowed because they are considered a beneficial improvement to a structure. The shape of roofs can be quite different. For instance with a flat roof at the maximum height if they installed panels they would need to tip them up, so 3 feet above the roof level would be necessary. Mr. Lyles commented that the three-foot restriction seems to be consistent with allowing mechanical devices that do not count against the height limitation. However, he does agree with Mr. DeLeo concerning subjectivity of the ordinance provision.

Mr. DeLeo inquired about the possibility of a solar array being installed at the City's old landfill; he asked if there was an energy storage system installed would it be considered an accessory or a stand-alone system. Mr. Tilton said he would consider it an accessory use because it is not needed without the solar panels. If you do not have the solar panels then you do not need an energy storage system. In his opinion the panels are the primary use and the accessory use will be the energy storage system. Mr. Fitzgerald added that the last statement in the energy storage system definition states "to be considered as accessory Energy Storage System shall be designed with appropriate storage capacity to serve the principle use only and not the electrical power grid".

Mr. DeLeo asked Mr. Tilton about an application that was removed from the Planning Board agenda a year prior, where a developer wanted to install a commercial energy storage facility. He asked if that project would have been considered a stand-alone. Mr. Tilton confirmed that yes, it would have. Mr. DeLeo stated the proposed location for that development was next to the Business Park Zone. He asked, given the proposed ordinance, would that proposal be precluded from moving forward. He also voiced concern limiting these projects to the Business Park and Industrial Zone since they are small areas of the City. Mr. Fitzgerald added that one reason to limit the zones is for safety, due to hazardous materials within these systems. He explained staff decided it best to be more restrictive at this point due to safety issues and if necessary, it can be changed at a later time.

Mr. Fitzgerald moved on to Subsection C, Lot Coverage. Mr. Lyles questioned if lot coverage could potentially reach 100% due to any exemptions. Mr. Fitzgerald answered it could not reach 100% due to set backs and buffers, but could go beyond the 75% (the lot coverage restriction in the Commercial and Urban Zones).

Mr. Lyles expressed concern over the stormwater provisions, noting that support footing be considered impervious in all cases. Mr. Hangge addressed the question explaining that there are some solar arrays that are an auger type of system. There is no concrete and the augers are driven into the ground where the system is then mounted to them. Mr. Fitzgerald added that while these systems are becoming more standardized there are still a lot of different systems that developers use.

Mr. DeLeo confirmed that section H only applies to systems over 40,000 square feet (large-scale systems). He suggested, that with further recommendation from the board, that this standard apply to medium-scale systems as well. Mr. Lyles asked if other towns or cities specified the requirements for having to do a decommissioning plan. Mr. Fitzgerald explained a significant portion of the proposed Section 825 came from the Town of Winslow's Ordinance and they used decommissioning for the large-scale systems only. Mr. Lyles and Roger Lessard both agreed that the standard should apply to medium and large-scale systems. It was also decided that section H would apply to both stand-alone and accessory, medium and large-scale systems.

Mr. Lyles confirmed with Mr. Hangge that he was satisfied with the references to the Fire Codes and NFPA requirements in Section 824.

Mr. DeLeo voiced concern over allowing developers to phase the financial assurance. Mr. Fitzgerald offered to remove the provision. The basis for it was to avoid heavy requirements where the applicant would need to supply 100% of the cost of decommissioning up front. This would lessen the burden and lessen the risk of the applicant building elsewhere. Mr. Lyles asked if it is industry standard to allow phases for financial assurance for decommissioning or if the applicant would have the option for negotiation with the City. Mr. DeLeo asked City Manager David Cole to join the discussion. Mr. Cole stated that perhaps the language could be flexible to allow the Planning Board to use their judgement. The goal is to ensure that the City is not left with the task of removing solar panels. Mr. Cole explained that not all solar panels, even stand-alones, are done on fee-simple sites; there are cases where the developer will lease the land. Therefore, the property owner would also want assurance they will not be responsible for removal of the panels as well. Mr. Cole asked Mr. Fitzgerald if it would make sense to provide flexible language in regards to letters of credit or insurance requirements. Mr. Fitzgerald replied there was flexibility built into the beginning of the Section 825, Subsection E and that the phasing option could be removed. The developer could still have the option to propose it.

Mr. Lyles suggested more specific requirements for the calculation of the decommissioning costs with inflation rates considered. This topic was discussed at length. It was decided to add language to subsection E to make it clearer that costs would need to be adjusted for inflation. It was also addressed that a peer review could be requested to get a third party opinion on the developer's calculations.

There was discussion on the wording of Section 825 pertaining to the "owner or operator" clause. It was determined to leave the wording as is.

Vice-Chairman DeLeo opened a public hearing at 7:55 PM for proposed amendments and additions to Chapter 56 Unified Development Ordinance, Article 3 Zoning Districts, Article 14 Definitions, and Article 8 Performance Standards. With no one coming forward, he immediately closed the Public Hearing.

Public Hearing

Mr. DeLeo addressed other members of the board to see if they were comfortable making a recommendation to the City Council or if they would rather see a clean copy of the proposed ordinance, definitions, and performance standards. Mr. Lyles asked staff their expectation before making a recommendation. Mr. Tilton answered that there is a time limit on getting this ordinance passed. It was also stated that, there is a public hearing at the council meeting, so amendments can be made at that time as well. Mr. Fitzgerald added that there are projects in the works and staff does not want to be in the position where the Planning Board has no regulations to follow when presented with an application. Further discussion ensued in terms of a recommendation to the City Council. Mr. Fitzgerald suggested the Planning Board recommend it to the City Council with the changes and amendments addressed at the meeting.

Vice-Chairman John DeLeo made a motion for the Planning Board to make a favorable recommendation to the City Council for the proposed amendments and additions to Chapter 56 Unified Development Ordinance, Article 3 Zoning Districts, Article 14 Definitions, and Article 8 Performance Standards including the following additions and/or deletions: Section 823 Paragraph H would state: applicants for large-scale and medium-scale systems shall submit a plan pursuant to Section 825 of this Ordinance. Section 825 Paragraph E, the sentence: The Applicant may propose securing the necessary financial assurance in phases, as long as the total required financial assurance is in place a minimum of five years prior to the estimated date of decommissioning the facility, will be removed. Rick Lyles seconded the recommendation and with some further discussion, it passed unanimously (4-0).

**Recommendation
made to City
Council**

6.) The Ellsworth Planning Office requests clarification from the Planning Board regarding ordinance thresholds for determining which applications need review for approval by the Planning Board.

Mr. Fitzgerald approached the board to begin the discussion on this item that was tabled from the January meeting. He referenced the memorandum included in the February Planning Board packets. The memorandum was written as a draft motion for reference purposes. Mr. DeLeo inquired if the intent of the draft motion was to incorporate the language into Chapter 56 Section 604.1. Mr. Fitzgerald answered that it was not. Mr. Fitzgerald went on to explain that the idea was that regarding the current language in Section 604.1 and 604.2 the board would recommend it be interpreted in the ways written in the memorandum. Mr. Lyles asked if the Ordinance had been interpreted using the proposed language in the draft motion would the Convenient MD project have come before the Planning Board. Mr. Tilton answered, that yes it would have.

There was discussion about amending the ordinance to be more clear rather than voting on how the current ordinance be interpreted.

Mr. Fitzgerald addressed the 5,000 square foot threshold. Last month the board requested staff do some research to look into what other municipal thresholds are. Mr. Fitzgerald explained that the closest municipalities he could find that specified the square footage in their ordinance, was Bar Harbor and Brewer. Bar Harbor's threshold is 400 square feet and Brewer's is 20,000 square feet. Mr. DeLeo asked Mr. Tilton's opinion on the 5,000 square foot threshold. Mr. Tilton answered that the threshold used to be 1,500 square feet, the 5,000 square foot threshold was a change made directly by the City Council. Mr. DeLeo asked Mr. Tilton when the change was made from 1,500 square feet to 5,000 square feet. Mr. Tilton answered that it was changed in 2012. Mr. Lyles suggested since there is no dire emergency to complete this then it can be continued until John Fink is present.

John DeLeo made a motion to Table this item.

Proposed amendments and additions to Chapter 56 Unified Development Ordinance, Article 3 Zoning Districts, Article 14 Definitions, and Article 8 Performance Standards: Tabled.

5.) Signing of Mylars

The final mylar plans were signed after the motion to adjourn:
Joy Woods at U.S. Route #1 Fifth Revision dated January 15, 2020

Mylars Signed

6.) Adjournment

Rick Lyles moved to adjourn the meeting, Secretary Roger Lessard seconded the motion, and it passed unanimously (4-0). The meeting was adjourned at 8:18 PM.

Minutes prepared by: Kerri Taylor, Development Services Coordinator
Minutes approved by Ellsworth Planning Board on March 4, 2020.

5/26/2020
Date



Roger Lessard, Secretary
Ellsworth Planning Board

**Vote to adjourn at
8:18 PM**

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

A video transcript of
this meeting is also
available on
YouTube.