

**Saco Planning Board
Meeting Minutes
August 21, 2018**

**WORKSHOP
City Hall Conference Room, 1st Floor, 5:30 PM**

The Board will meet on site of the proposed Saco East Island Project

**MEETING
Conference Room, 1st Floor, 6:30 (after the Site Walk)**

Planning Board Members Present: Neil Schuster, Chair; Don Girouard, Alyssa Bouthot, Joyce Clark, Matt Provencal, Rene Ittenbach, Vice Chair; Peter Scontras

Planning Board Members Excused: N/A

Staff Members Present: Denise Clavette, Planning and Development Director; Joseph Laverriere, City Engineer; Zach Mosher, City Planner

NOTE: Meeting is audio recorded. These audio records will be posted on the City's website and available for public review within one week of the meeting.

Regular Meeting – 6:30 pm

1. Minutes of August 7, 2018

Action: No minutes were provided

2. Public Hearing: Council initiated text amendment to review a proposed draft Blasting Ordinance (Chapter 71), intended to regulate blasting activity associated with development within Saco.

Zach Mosher: During the Lombard Lane Subdivision development in 2016, ledge was encountered during construction and a blasting company was brought in and neighbors became unhappy and concerned about damage to their foundations. As you are aware, there are currently no regulations in Saco concerning blasting. Earth removal operations are recognized by the Zoning Ordinance concerning gravel pits and similar uses, but where new residential development is occurring there are no blasting standards in place.

Staff has compiled a draft ordinance the Board's review. The original draft ordinance is based on the city of Augusta's blasting ordinance. Staff understands that no one internally is an expert in blasting and therefore a geotechnical firm from Biddeford was hired to review this ordinance. Eric Wiberg, P.E., has expertise in this area and has reviewed the draft ordinance and you can

find his comments in the margin. In this latest draft, you can also find the comments of Saco's city attorney, Tim Murphy, included in the margin as well.

The Planning Board workshopped this item on 6/12/2018 and 8/7/2018 and is now being brought back to the Board for a public hearing. The Planning Board wondered if the driving of piles should be part of the blasting ordinance and staff will be sure to forward that recommendation to the City Council. During the last workshop, the Board in general seemed eager to forward a positive recommendation to the City Council.

II. PLANNING BOARD ACTION – If the Board is in agreement and the public elicits no major concerns, the Planning Board is being asked to send a positive recommendation on incorporating this blasting ordinance into the Saco Code of Ordinances as Chapter 71.

III. STAFF RECOMMENDATION – Staff recommends the Planning Board send a positive recommendation to the City Council concerning the adoption of a Blasting Ordinance with the following findings:

- a. A Blasting Ordinance would provide a Saco residents proper notification if they are within a certain area of the proposed blasting work.
- b. A Blasting ordinance would provide Saco residents protection and safety from the practice of blasting.

Board Discussion:

Don brought up several proposed changes such as; changing zoning ordinance to Chapter 230, both on page 12 and 14; whether blasting area should be defined by the Code Office; was \$1MM insurance large enough; notifications to abutters within 500ft, and public notice in paper; and striking out B on page 1.

Alyssa: I move to open the public hearing, seconded by Peter, and so voted 7-0

Roger Gay, councilor, ward 2: A constituent in his district asked who is doing the blasting on the project on Flag Pond Rd? (Hilltop on Jenkins Road project). **Zach:** That was Paul Harris.

Don Pilon: At the council meeting, councilor Minthorn stated that when a blasting survey goes out, that maybe a certificate of insurance should be included? But that could be good or bad, because it may create false claims.

The Board agreed that a certificate of insurance should be included in the Code Enforcement file.

Rene: I move to close the public hearing, seconded by Alyssa, and so voted 7-0

Don: "Move to send a positive recommendation to the City Council for the proposed adoption of a Blasting Ordinance (Chapter 71) into the Saco Code of Ordinances." with these changes as discussed, change wording on zoning ordinance to

read Chapter 230 on page 12 and 14; that blasting area be defined by the Code Office; to be determined if \$1MM insurance coverage is sufficient; to add that notice to abutters within 500ft and notice to be sent to local newspaper; and the B on page 21 be eliminated. seconded by Peter, and so voted. 7-0

3. Public Hearing: Preliminary Subdivision review for 36 Fenderson Road. Tax Map 101, Lot 37-8-1. Zoned C-1. Applicant is John W. Lane

Kyle McCormick is seeking preliminary subdivision APPROVAL which will allow him to purchase a lot at the corner of Fenderson Rd and John Lane Way (Tax Map 101, Lot 37-8-1). He is interested in purchasing this one lot from current owner Mr. John Lane to build his home on. The lot has both frontage on John Lane Way and Fenderson Rd. It is currently zoned in the Conservation District (C-1). The applicant is proposing no new infrastructure as well as a private well and subsurface disposal system. Due to personal reasons, the owner of the lot is not able to bring forth this subdivision proposal. However, Mr. McCormick possesses a duly executed P&S and so he has sufficient right, title and interest to bring forward a subdivision application for at least the one lot they propose to purchase.

Mr. Lane owns the following contiguous parcels: Tax Map 101 - Lot 37-8, Map 101 - Lot 37-3 (the Lane home), and Map 37-8-1 (being sold to a couple and the lot in issue). In addition, Mr. Lane divided off a lot in 2016 to Matt Chamberlain that came out of Map 101, Lot 37-8.

Mr. McCormick is planning to purchase the lot at Map 101, Lot 37-8-1 and has a title attorney who has carefully researched the parcel and its history. The title attorney has identified a subdivision issue that would in her opinion make the lot unsaleable in the future. The applicant's attorney (Mr. Paul Weinstein) reviewed the subdivision issue and the title attorney's conclusions (and the legal reasoning), and he agrees with the title attorney's determination regarding Map 101, Lot 37-8-1.

The counsel representing the buyer is of the opinion that since Mr. Lane has taken several parcels into his name (the lot in question included), those lots become merged for purposes of subdivision law and subdivision review. This "merger provision" in effect, at least in the applicant attorney's eyes, negates this lot from being a lot of record that was created in 2004 and means it is instead being created once the sale to Mr. McCormick transpires. Since the split to Mr. Chamberlain occurred within the past 5 years, the conveyance of this lot would trigger subdivision review. The attorneys for the applicant hold that while no subdivision violation currently exists, one will exist once Map 101, Lot 38-7-1 is conveyed to Mr. McCormick and a structure erected. Therefore this conveyance needs Planning Board review and approval as part of subdivision review to obtain a clean title.

City Staff does not share the view that this is a subdivision since the lot in question has existed since 2004. Staff believes the lots are duly formed and do not violate subdivision law, viewing this as a lot of record, created in 2004, and therefore the sale does not trigger the need for

subdivision approval. However, regardless of internal opinion as to the existence or non-existence of a lawful subdivision lot, the title attorney needs subdivision approval to issue an acceptable, clean title. Without that title, the lot may not be conveyed or re-sold at any point in the future. The city's attorney, Tim Murphy, will be present at the meeting and I have also included a letter from Tim as an attachment to this memo.

There is no new infrastructure is being proposed with this subdivision. The lot will be served with a private well and private subsurface disposal systems. This lot does not meet the minimum lot size requirements for the C-1 district since Mr. Lane conveyed two strips of land to the City in 2016 for an extension of Fenderson Road. The City entered into a consent agreement with Mr. Lane in December of 2017 regarding the lot size and therefore the lot the applicant is interested in purchasing is a legal, nonconforming lot.

II. **Determination of Completeness** - The application for preliminary plan review is complete.

Don: "I move to find the application for final subdivision review to be complete." Seconded by Peter, and so voted 7-0

III. DEPARTMENT REVIEW

Police Department - No comment.

Fire Department – No comment

Public Works / Engineering Department – No comment

Planning Department – Planning is supportive of the subdivision application. _

Code Enforcement – As mentioned, code enforcement considers this a lot of record created in 2004, purchased by the current owner in 2009, and therefore a building permit was issued for property in April of 2018.

IV. PLANNING BOARD ACTION- The Planning Board is being asked to review this Preliminary Subdivision Plan application using the Saco Subdivision Regulations. The Planning Board will consider the following criteria from the Subdivision Regulations before granting approval for the preliminary plan:

The Staff finds that the Preliminary Subdivision Plan Application submitted for the Fenderson Rd subdivision meets the criteria set forth in Article 1, 5, and 10 of the Saco Subdivision Ordinance.

V. WAIVER REQUEST: The applicant is requesting waivers per Article 11, Sec. 12.1 and 12.2 from the Planning Board for the following subdivision preliminary site plan requirements: Sec

5.2.2 (7), (11), (12), (16), (17), (18), and (19) as not applicable to this plan. The applicant is also requesting waivers from Sec. 5.2.3, Accompanying Statements and Data of Saco Subdivision Ordinance: 5.2.3 (3), (4), (6), (11), and (15) as not applicable.

VI. STAFF RECOMMENDATION – Staff recommends accepting the waiver requests for Mr. McCormick’s application as this is a simple subdivision application.

Don: “Move that Board grant approval for the waivers under the provisions of Article 11 of the Saco Subdivision Regulations for the waiver request related to Sec. 5.2.2 and 5.2.3 of the Saco Subdivision Regulations.” And as detailed and discussed earlier, seconded by Joyce, and so voted 7-0

Don: I move to open the public hearing, seconded by Alyssa, and so voted 7-0

No comments from the public were made

Don: I move to close the public hearing, seconded by Alyssa, and so voted 7-0

Board discussion:

Don: he questioned the discrepancy in the square footage of the parcel. The consent agreement stated 77,000s.f. but Mr. Gadbois plan states that it is 86,000s.f. What is it?

For Tim Murphy, city attorney’s response to Don, please refer to the audio recording.

Don “Move that the Board grant approval under the provisions of the Saco Subdivision Regulations for the preliminary plan submitted for Fenderson Rd subdivision based on the attached Conditions of Approval.” Seconded by Peter, and so voted 7-0

Respectfully submitted by,

Maggie Edwards
Board Secretary