

**MINUTES OF MEETING  
PHIPPSBURG PLANNING BOARD  
October 12, 2021**

*It should be noted that state government restrictions about public gatherings in response to the Coronavirus outbreak were removed on May 24, 2021, so, per the vote of the Phippsburg Select Board on May 19, 2021, were no longer in force at the time of this meeting. The meeting was, as is customary, recorded so that members of the public could also observe without attending in person.*

**MEMBERS PRESENT:** Mark Hawkes, Alternates Robert Smith and Ashley Thayer, and Marie Varian, Chair.

1. **[5:16]** The meeting was called to order by Ms. Varian at 5:02 pm at the Town Hall. Ms. Varian reported that there was a quorum. Ms. Varian appointed Ashley Thayer and Robert Smith to serve tonight in place of other members.
2. **[5:41]** **Consider the following minutes:**
  - **Regular Meeting on September 14, 2021**
  - **Special Meeting: September 30, 2021**

Mr. Smith moved to accept the minutes of the regular meeting on September 14, 2021, as printed. Ms. Thayer seconded the motion, which was passed unanimously.

Mr. Smith moved to accept the minutes of the special meeting on September 30, 2021. Mr. Hawkes seconded the motion, which was passed unanimously.

3. **[6:55]** **Hawkes Tree Service, Inc., Jarrod Hawkes, owner, 4 Mill Road, Tax Map 01, Lot 28 – Construct seasonal dock system in the General Development District of the Shoreland Zone. Represented by Tim Forrester, Atlantic Environmental, Woolwich.**  
**Application #2021-29**

*Mr. Mark Hawkes, Jarrod Hawkes' father, recused himself from consideration of this application.*

Ms. Varian called on Mr. Forrester. Mr. Forrester gave the Board members a revised application, replacing the name of the owner, Jarrod Hawkes, with the name of the company, Hawkes Tree Service, as the applicant.

Mr. Forrester described the proposal as a seasonal dock system consisting of two aluminum ramps, an interim float section and then two floats at the end configured in a “T”. Dimensions of the ramps are: 3.5’W x 36’L. The dimensions of each of the three floats are: 10’W x 20’L.

This dock system will allow Mr. Hawkes and his staff to gain more convenient access to “challenging” sites elsewhere on the river from which they need to remove trees as part of their business operation.

Because it is a seasonal dock, it does not require approval from the DEP, but does require approval of the Army Corps of Engineers. Mr. Smith asked if the application was for a commercial dock or a residential dock. Mr. Forrester responded that it will be used for commercial purposes, but that would not preclude Mr. Hawkes from using it for a personal boat. Mr. Forrester was not aware of any distinction made in the regulations between commercial use and residential use of a dock.

Ms. Varian stated that the dock would be connected to land owned by a business, but she did not think that there was any problem with the business putting in a dock that could also be used for non-commercial purposes.

Mr. Forrester reported that this was technically an after-the-fact application since the system was already installed.

Ms. Varian reported that this application was being considered under Phippsburg Shoreland Zoning Ordinance Sections 13.D, "The General Development District"; 14, "Table of Land Uses," Item 17, "Piers, docks . . ."; 15.D, "Piers, docks . . ."; 17.B, C & D, "Permits Required," "Permit Application," and "Procedure for Administering Permits.

She reported that the Harbor Master has submitted a letter of non-objection to the project and that the application included the following:

- A letter of permission for Tim Forrester to represent the applicant;
- A detailed description of the project and its site;
- Maps showing location;
- Overhead photos showing landscape and shoreline;
- A schematic of dock construction;
- A copy of deed; and
- A copy of Army Corps of Engineers permit.

She reminded the applicant that state law requires photos of completion within 20 days of same.

Permit also considered under Section 16.A.3, "Permits Required," which states that construction commenced before a permit is issued requires four times the normal fee payment. In this case, the fee is therefore \$400. The applicant shall secure any and all permits from any and all persons and agencies required to complete the project.

Mr. Smith moved to accept the application as presented. Ms. Thayer seconded the motion, which was passed unanimously.

Fee of \$400 was paid by the applicant by check #6120.

*Mr. Mark Hawkes returned to the meeting.*

**4. [22:17] Maine Woodland Properties, Parker Head Road, Tax Map 9, Lot 3, Represented by James A. Boyle and Joseph Marden – Continue review of Final Plan phase of proposed 14-lot Kennebec Shores Subdivision. Application #2021-06**

Ms. Varian stated for the public that there had been a meeting on September 30, 2021, to try to get some of the information nailed down to move things along.

Mr. Boyle said that he has made the required revisions in “Protective Covenants and Restrictions,” which is Article III of the “Declaration of Protective Covenants, Reservations, Restrictions, and easements of Kennebec Shores Subdivision, Phippsburg, Maine.” The most significant change is the removal of “*nor shall it prevent either the attachment to or inclusion within the principal residential building an apartment or a separate guest house (with municipal approval)*” at the end of the last sentence in ¶ a, “Residential Use.”

Other revisions that he identified are:

- In ¶ f, “No Mobile Homes; Trailers and Tents,” they added the words “*Recreational vehicles*” at the beginning of the second sentence.
- At the end of the same sentence he added “, *provided the use is in accordance with the Phippsburg Land Use Ordinance.*”
- In ¶ l, they removed the references to horses being allowed on the land and replaced that language with “*Horses are prohibited.*”
- In ¶ k, names of roads—Chimney Rock Road, Kennebec Shores North Road, Kennebec Shores South Road, and Misty Cove Road—were inserted.

There was discussion about the language in the last paragraph regarding cellar holes/old foundations. The question was whether it was desirable to add language to make sure it is clear that cellar holes and foundations may not be removed. Consensus was that it was not required, and the language does not need to be revised.

Mr. Smith moved to accept the revised “Protective Covenants and Restrictions” as submitted. Ms. Thayer seconded the motion, which was passed unanimously.

Ms. Varian then asked about a “yield” or “stop” sign at the end of the subdivision road at its intersection with Parker Head Road. Mr. Marden responded that there would be a stop sign and it was currently included on the site plan.

Mr. Smith noted that in the middle of the third paragraph of the first page of the “Declaration of Protective Covenants, Reservations . . .” reference is made to “Sitelines Surveying.” He asked if that was the correct company name. Mr. Marden responded that the correct name is “Sightlines PA,” and would be corrected.

**[39:30]** Discussion moved to the applicant’s performance guarantee.

Ms. Varian reported that the Select Board sent word that they do not have specific requests for the amount being negotiated and would support the Planning Board's ability to negotiate an appropriate figure.

Ms. Varian then reported that they had the cost estimate reviewed by Pine Tree Engineering, Bath. The recommendation was that the inspection estimate be increased by \$3,000 and a 15% contingency (\$67,677) be added. Ms. Varian stated that no conclusions had been reached, except for the acknowledgement that the total of \$411,180 did not include \$37,000 expenses for electrical-poles, hardware, which is in the itemized costs but not included in the total. Adding the missing \$37,000 to the \$411,180 total submitted produces a revised cost estimate of \$448,180. Adding the \$3,000 for additional inspection costs produces a new total of \$451,180. Fifteen percent contingency is equal to \$67,677, producing a final total of \$518,857.

Mr. Hawkes moved to accept \$520,000 for the escrow account. Mr. Smith seconded the motion. Mr. Boyle expressed the importance that it be clear to both parties what conditions must be met in order to allow the developer to have funds released as phases are completed. (*Note: this motion was repeated and voted on at the 1:35:10 mark in the video of the meeting and is reported below, on page 6, in these minutes.*)

Ms. Varian directed the group to page 33 of the Subdivision Ordinance (Section 8.B.11.e), under "Additional Improvements and Requirements":

*"Certification of Construction. Upon completion of road construction and at the direction of the Board, a written certification signed by a professional engineer registered in the State of Maine shall be submitted to the Board at the expense of the Applicant, certifying that the completed road meets or exceeds the design and construction requirements of the subdivision ordinance."*

Ms. Varian acknowledged that this paragraph refers to completion, but that it would be the Town's expectation that this procedure would be followed during the construction period, with inspections occurring and completion certified by a professional engineer as appropriate.

Mr. Boyle suggested that the process should be that when the engineer has certified completion of a phase of the project, he would be required to authorize, in writing, the Phippsburg official who is the signatory to the escrow account to release the appropriate amount of funds.

Ms. Varian gave Mr. Boyle a copy of the language prepared by the Town's attorney regarding the performance guarantee. He reviewed it and said that it seemed to cover the issue they were discussing about the procedure under which money would be released from the escrow account by the Town to the developer during the construction period.

Discussion about how the process would work resulted in the following consensus:

- i. The developer would notify the Planning Board when a phase of the project has been completed and request a release of the funds allocated to that phase.
- ii. The Board would ask the designated professional engineer to inspect the project and determine whether the developer's request for a release of funds is appropriate. The engineer would be accompanied on the inspection by representatives of the developer.

- iii. If the engineer concurs that the identified phase of the project is complete and the allocated funds should be released, he would certify that in writing to the Planning Board.
- iv. Upon receipt of the engineer's certification, the Planning Board would review it and notify the Select Board that it approves the release of the funds.
- v. The Select Board would then authorize the Town's signatory on the escrow account to release the funds.

It was suggested that Rob Prue, President of Pine Tree Engineering, would be an appropriate person to hire as the engineer for this process.

Mr. Boyle noted that, in the performance guarantee language suggested by the Town attorney, it was required that the project be completed in 12 months and there was no option to get an extension. He stated that they have every intention of starting and finishing as soon as possible and they have never taken more than 12 months, but there should be an option for extending the construction period if necessary.

Mr. Boyle said that they will accept the attorney's language for the performance guarantee. They hoped it would be possible to add the requested language to allow for an extension beyond 12 months, but would not hold up the approval for that. He asked whether it would be possible simply to change the 12-month period to 24 months, which would remove any concern about meeting the deadline.

Decision was made to change the time period from 12 months to 18 months, giving the developer until April 2023, assuming the permit is issued within the month. Ms. Varian will tell the Town attorney that the language is acceptable, as is, with the only change being the extension to 18 months permitted for the construction period.

Mr. Boyle said that the Town would set up the escrow account and then they should notify him with instructions for wiring the funds to the account.

Mr. Hawkes noted that the amount to be released at each phase would be determined by the revised cost estimate agreed to in this meeting. Mr. Smith stated that the 15% contingency, or whatever remained of that, would be released in the final payment at completion of construction.

Ms. Varian will speak, first, to the Town attorney about all the decisions made at this meeting concerning this project, including the performance guarantee language and the escrow account. Then she will find out the opinion of the Select Board regarding the selection and hiring of Rob Prue to serve as the engineer. She reminded everyone that Mr. Prue has not yet been hired and has not yet been approved by the Select Board to be hired. She said that question would not have to be addressed in a meeting of the Select Board, but could be taken care of by a written statement from the Board.

**[1:24:23]** Ms. Varian next brought up the subject of the Stormwater Management Plan. She asked whether it should be listed as a condition. Mr. Marden responded that it was already listed in the Subdivision Plan. He read the language to the Board: *"This subdivision is subject to the*

*following permits from the MDEP: Stormwater Management Law permit . . .*” The Board agreed that this was satisfactory.

Mr. Marden provided the Board with his revisions to Items #6 and #7 in the *Conditions of Approval*, printed on Sheet C3 of the plans. Ms. Varian asked whether it was necessary to have in Item #7 the phrase at the end, “without Planning Board approval.” She asked whether the Planning Board would ever approve it. Mr. Marden responded that he likes to leave that in because, “you never know.” Mr. Smith said that he agreed with Ms. Varian, that if something came up that changed the situation, he was confident something could be done, but as it is now, it implies that there is a thought that anyone might approve it. Mr. Boyle said that the problem with removing that language is that a court would then not allow any change. Including the language gives the Planning Board the opportunity to review it if they wish. Mr. Hawkes brought up the 48” tree. What if it should die and become a hazard?

Board consensus was that the language would remain only pertaining to the tree, nothing else.

Ms. Varian noted that they had never received a survey on endangered species. She asked whether they had ever done any research to learn about that. Mr. Boyle said that he hadn’t seen anything in the Ordinance requiring such a survey. He said that they did a search on the state website regarding rare species. No rare species were shown for this site.

**[1:35:10]** At this time, Mr. Hawkes repeated his motion regarding the amount to fund the escrow account—that it should be \$520,000. Ms. Thayer seconded the motion, which was passed unanimously.

**[1:36:51]** Mr. Hawkes moved to accept the conditions of approval, as corrected. Mr. Smith seconded the motion, which was passed unanimously.

Ms. Varian next brought up the subject of selling lots. She reported that the Town attorney provided the following language: “Pursuant to Section 8.A.4, no lot in the subdivision may be sold, leased, or otherwise conveyed before an approved road is completed to that lot. Once the approved road has been completed to a particular lot, the developer may convey the lot.”

It is understood by the Board that Section 8.A.4 does not preclude activities like marketing, executing purchase and sale agreements, etc., prior to the completion of the road to a particular lot. However, Mr. Boyle stated that, as a practical matter, they will not be marketing or selling lots until the spring, by which time they expect the roads to be completed. The distinction between marketing and selling was meaningful earlier in the year when there was a possibility of marketing and selling in the fall, but that is no longer the case.

Ms. Varian asked for a motion to accept the Town attorney’s wording regarding the selling of lots. Mr. Hawkes moved to accept the language as stated above: “Pursuant to Section 8.A.4, no lot in the subdivision may be sold, leased, or otherwise conveyed before an approved road is completed to that lot. Once the approved road has been completed to a particular lot, the developer may convey the lot.” Mr. Smith seconded the motion, which was passed unanimously.

[1:47:13] The Board next reviewed Section 1, "Purpose," of the Subdivision Ordinance and determined whether the facts about Kennebec Shores Subdivision are consistent with the criteria listed in this section. The Board determined that all criteria listed in ¶A through N in Section 1 were satisfactorily addressed in the Board's consideration of this application. Specific details about motions made and seconded, discussion, and votes taken are provided in a separate document, *Findings of Fact and Conclusions of Law*.

[2:12:40] The Board concluded that it had done sufficient due diligence regarding the remaining subdivision regulations that it could decide at this meeting whether to approve this subdivision, with the findings to be documented in the above-referenced *Findings of Fact and Conclusions of Law*.

Mr. Marden said that he would be able to bring the plans for Board signatures by the following day (Wednesday), as Mr. Smith will be leaving town on Thursday. Ms. Varian stated that, based on her conversation with the Town attorney, it would not be necessary for Mylar plans to be provided to the Town, as is stated in Section 6.A in the Subdivision Ordinance. Ms. Maher suggested that Ms. Varian make a note to the file that the Town's requirement that Mylar plans be submitted is outdated, because the proper method has changed.

Mr. Marden said that, because of the other things to be accomplished, such as setting up and funding the escrow account, being able to record the signed plans by Monday of the following week would be workable in terms of their schedule.

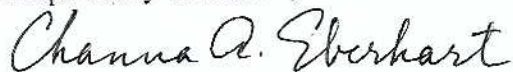
Mr. Smith moved to accept the Final Application of the Kennebec Shores Subdivision Plan with corrections as identified. Ms. Thayer seconded the motion, which was passed unanimously.

5. [2:22:47] **Other Business.** None.

6. [2:22:57] **Announcements.** Ms. Varian notified the Board that they have to start working on amendments in preparation for the 2022 Town Meeting, with a particular priority for Shoreland Zoning. There should be at least one meeting scheduled before the end of the year.

7. [2:50:48] **Adjourn.** Mr. Smith moved to adjourn. Ms. Thayer seconded the motion, which was passed unanimously. Meeting was adjourned at 7:35 pm.

Respectfully submitted,



Channa A. Eberhart  
Secretary