

A regular meeting of the Bath Planning Board was called on 3-15-11 for the purpose of conducting regular business.

**MEMBERS PRESENT**

Bob Oxtan, Chair  
James Hopkinson, Vice Chair  
Andy Omo  
Paul Fraser  
Donald Rogers  
Robin Haynes  
Drew Molbowski (non-voting student member)  
Haley Grill (non-voting student member)

**MEMBERS ABSENT****STAFF PRESENT**

Jim Upham, Planning Director  
Marsha Hinton, Recording Secretary  
Attorney Pat Scully, representing the Planning Board

Mr. Oxtan, Chair, called the meeting to order in the third floor Council Chambers at 6:00 p.m. on Tuesday, March 15, 2011.

**Minutes of the February 15, 2011, Planning Board meeting.**

**MR. HOPKINSON MOVED, SECONDED BY MR. FRASER, TO APPROVE THE MINUTES OF FEBRUARY 15, 2011, AS SUBMITTED.**

**UNANIMOUS APPROVAL****Old Business**

None

**New Business****Item 1**

**Planning Board review of existing record and deliberations pertaining to wetlands, traffic, connectivity, waiver of road geometric standards, and the construction infrastructure plan requirement. – Wing Farm Subdivision (West Bath)**

Mr. Fraser recused himself from consideration of this agenda item.

Mr. Oxtan introduced Mr. Pat Scully the attorney advising the Planning Board on this matter.

The Planning Board reviewed the evidence in the file on this matter as follows:

**Wetlands**

Mr. Upham read the standard in the Land use Code: "Section 13.13, K, says, 'Whenever situated entirely or partially within 250 feet of any wetland or river as defined in 38 M.R.S.A. § 435, et seq., the proposed subdivision must not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water'"

Dr. Haynes stated that the applicant's experts (Eco Analysts), the Department of Environmental Protection, the Department of Conservation, Inland Fisheries and Wildlife, and the Army Corps of Engineers all found that there were no significant or unique areas or species that would need to be carefully protected in this area. She also mentioned the General Permit issued by the Army Corps of Engineers on June 9, 2010.

Mr. Omo commented that evidence showed that the culvert would actually improve the wetlands.

Mr. Hopkinson mentioned that he felt that the Army Corps of Engineers permit was very important. He also pointed out that the wetlands have been impacted by the Kings Highway for quite some time and that the new road design would increase the connection of the wetland from one side of the road to the other.

Mr. Hopkinson also stated that he found the engineering studies pertaining to the road design and the comments from the Bath Public Works Director to be persuasive.

The Planning Board discussed the permit, the King's Highway, comments in the record by City Staff, the culvert, and the applicant's erosion control plan.

The Planning Board was polled and unanimously agreed that Land Use Code Section 13.13, K, has been met.

#### Waivers of Geometric Standards

Mr. Upham read the standard in the Land use Code: "Section 13.18 covers waivers. It says that the Board: 'may waive a standard or requirement if the applicant requests the waiver in writing, and the Board finds that, due to special circumstances, or inappropriateness, meeting the standard or requirement is not required in the best interest of the public health, safety and general welfare. ... Waivers must not nullify the intent and purpose of the Comprehensive Plan, the Land Use Code, or this Ordinance.'"

Mr. Hopkinson stated that the special circumstances are the minimization of the impact to the wetlands. Mr. Hopkinson added that he is satisfied the waivers are consistent with the Comprehensive Plan. He also said that it would be inappropriate to have different standards of the roadway design in the same development. He said that the public health, safety, and general welfare would not be negatively impacted but actually improved by lessening the impact on the wetlands.

The Planning Board discussed how closely tied this item was to the discussion of the wetlands, public health and safety, guidance provided in the Comprehensive Plan and minimizing impact to the wetlands.

The Planning Board was polled and unanimously agreed that Land Use Code Section 13.18 has been met.

### Connectivity

Mr. Upham read the standard in the Land use Code: "Section 13.14, B, 2, (d), of Article 13 says:

'Connectivity is provided by a system of streets with multiple routes and connections serving the same origin and destination, and not having street bottle-necks. Subdivisions on dead-end street systems should be avoided whenever possible.

'It is the intent of these regulations, therefore, to require street connectivity whenever possible, while discouraging unnecessary through-traffic.

'(i) The applicant must demonstrate to the Board how the design of the subdivision has achieved connectivity, if feasible.

'(ii) When connectivity is not feasible, to reduce the risk to public safety, the Board, must require at least one or more of the following measures be incorporated into the design of the subdivision: Notwithstanding the requirements of Section 13.14 (B)(2)(e), the grade of the street bottle-neck must be 5% or less; the new buildings in the subdivision must have sprinkler systems approved by the Fire Chief and the CEO; the street bottle-neck must be built with 2 travel lanes separated by a median strip at least 10 feet wide, and parking must be prohibited on such travel lane-separated street bottle-neck; or the subdivision served by the dead-end street system must not generate average daily traffic of 100 trips or more.'"

Dr. Haynes commented that she didn't believe that Bath could impose the requirement on the Town of West Bath that sprinkler systems be required. She said that she would be more comfortable if there could be a letter stating that connecting this subdivision to another road in West Bath was not possible. Dr. Haynes also stated that the building of Anchor Road so it would be suitable as an emergency access by a certain date should be a condition.

Mr. Hopkinson said that he felt the condition requiring sprinkler systems in the buildings in the subdivision in West Bath was appropriate. He pointed out that no parking will be allowed on the rebuilt Kings Highway. He also said that if adjacent property is ever acquired by West Bath the impact of such purchase on access needs to come back to the Planning Board for review.

Attorney Scully stated that the city's ordinances do allow Bath to require sprinkler systems in the buildings in this subdivision even though they would be in West Bath.

Mr. Hopkinson brought up the fact that one boundary of this subdivision was Route 1, which does not allow access. And he pointed out that to the west is that same physical impediment that prevented Bath from accessing the additional acreage in Wing Farm subdivision Phase 2.

The Planning Board was polled and unanimously agreed that Land Use Code Section 13.14 B 2 (d) has been met with the following as possible conditions: that no on-street parking be allowed, that sprinkler systems be required in the buildings in the subdivision in West Bath, that a letter be submitted by the applicant stating that a diligent search was made and no feasible egress points from West Bath were found, that if an egress point is established from the West Bath side at a future time that the applicant comes back to the Planning Board for review of such plan, and that Anchor Road become an emergency access.

The Planning Board requested that the Planning Director follow up on the Anchor Road emergency access point with the appropriate City Staff.

### Infrastructure Plan

Mr. Upham read the standard in the Land use Code: "Section 13.11 of the Code identifies the required submissions an applicant for subdivision approval must provide. Section 13.1, E, lists 36 specific items, including in Section 13.11, E, 33:

'An infrastructure construction plan including a blasting plan, an estimate of material to be removed or filled, routes for trucking of material, times of trucking and duration of the construction activity.'"

Attorney Scully pointed out that Judge Horton seemed to question whether the Board felt that the infrastructure construction plan had been waived or whether the Board felt it had been submitted.

Mr. Hopkinson stated that some of the ordinance criteria were met as part of the application and others were not addressed because the construction of structures would be reviewed under ordinances of another municipality. He said that it would be appropriate to have West Bath notify the Bath Planning Director if blasting were to take place and to allow the Bath Planning Director to comment to the West Bath Planning Board on proposed developments so that Bath could monitor construction in West Bath.

The Planning Board was polled and unanimously agreed that Land Use Code Section 13.11 has been met or is not applicable with the condition that the Planning Director be notified in advance of construction activities on the West Bath side.

### Traffic

Mr. Upham read the standard in the Land use Code: "Section 13.13, E, of the Code governs the traffic standards applicable to subdivisions. This Section provides that the subdivision 'must not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of highways or public roads existing or proposed.'"

Dr. Haynes said that some improvements at the Congress Avenue-Centre Street intersection had already been made to improve the sight distance. She pointed out that additional traffic studies would be required at 50 percent, 75 percent, and 100 percent build-out of the

combined West Bath and Bath phase 2 developments. She suggested that if artificial turf is put on McMann Field and the activity at the field increases as suggested that additional traffic studies be done. Dr. Haynes stated that the City apply for a reduced speed limit on Congress Avenue. She also mentioned that the sidewalks along Centre Street and Wing Farm Parkway should be kept clear so that pedestrians do not need to walk in the street.

Mr. Hopkinson stated that the conditions imposed on the previous approval of the subdivision should be repeated in this approval and that the location of a stop-bar, painted on the pavement back from the Congress Avenue intersection when the intersection is signalized, should be a condition. He also pointed out that the Traffic Movement Permit issued by Maine Department of Transportation provided support that the standard had been met and that the requirements of the Traffic Movement Permit should become conditions.

The Planning Board discussed the January 2010 traffic study, appropriate intersection treatments, impact from proposed improvements to the athletic fields, improvements to Congress Avenue, traffic improvements already implemented at the Congress Avenue - Centre Street intersection, the stop-bar on the road to allow for turning of tractor trailers, and the MaineDOT requirements for traffic control measures.

The Planning Board was polled and unanimously agreed that Land Use Code Section 13.13 has been met based on the MDOT traffic movement permit and the traffic study, with the condition that the language be clarified with regard to the impact fee levied being one time per lot.

The Planning Board also recommended that the Planning Director follow up with appropriate City Staff on the Planning Board's concerns with regard to the speed limit on Congress Avenue, clearing of cross walks during the winter, and the set back stop-bar with appropriate City Staff.

The Planning Board directed the Planning Director to prepare Findings of Fact and a Notice of Decision on this matter to be heard at the April 19, 2011, meeting.

## **Item 2**

**Request for Site Plan Approval** – 7 Bernard Street, (Map 22, Lot 51-1); Luke Trottier, applicant.

**DR. HAYNES MOVED, SECONDED BY MR. OMO TO FIND THE APPLICATION COMPLETE WITH WAIVERS OF SECTION 12.08 F, 4; H, 3; K, 3; M, 1; M, 4; AND Q BASED ON EXPLANATION CONTAINED IN THE APPLICANT'S SUBMISSIONS.**

## **UNANIMOUS APPROVAL**

Mr. Trottier stated that he has purchased the lot across the street and is proposing to build a garage. Mr. Trottier added that the property on which his home is located is too small for a garage.

The Planning Board discussed tying the two properties together so that if sold separately the garage would not become an illegal structure.

Mr. Oxton opened the floor to members of the public present who wished to comment.

None being seen, Mr. Oxton closed the public portion of the meeting.

**MR. HOPKINSON MOVED, SECONDED BY DR. HAYNES, TO APPROVE THE REQUEST FOR SITE PLAN APPROVAL AT 7 BERNARD STREET, (MAP 22, LOT 51-1) FOR LUKE TROTTER, APPLICANT, WITH THE FOLLOWING CONDITIONS: THAT THE BOOK AND PAGE NUMBER OF THE RECORDED DEEDS BE INCLUDED ON THE NOTICE OF DECISION AND THAT THE NOTICE OF DECISION BE RECORDED IN THE REGISTRY OF DEEDS AND THAT THE HOUSE LOT AND THE GARAGE LOT CANNOT BE SOLD SEPARATELY WITHOUT NOTIFICATION TO THE BATH CODE ENFORCEMENT OFFICER.**

**UNANIMOUS APPROVAL**

**Other Business**

None.

**Adjournment**

There being no further business before the Board, **MR. HOPKINSON MOVED SECONDED BY MR. ROGERS, TO ADJOURN THE MEETING AT 7:23 PM.**

**UNANIMOUS APPROVAL**

Minutes prepared by Marsha Hinton, Recording Secretary