

Minutes of the September 4, 2024, special meeting of the Board of Directors of the West Harbor Pond Watershed Assoc

At 7PM on September 4, Merritt Blakeslee, Chairman of the West Harbor Pond Watershed Association opened a special meeting of the Board of Directors. All board members were present except Jill Bryant. An Association member, Jim Barrows, attended as a guest. The purpose was to discuss the recent Planning Board's decision to approve the proposal by the owner of the property where the Beach Cove hotel burned in 2022 to subdivide the property into four lots for single-family homes.

The board discussed whether or not to appeal the Planning Board's decision to approve the subdivision plan to the Board of Appeals based on the failure of the plan to comply with key provisions of the Boothbay Harbor ordinances, particularly the shoreland zoning rules.

1. The plan approved by the Planning Board allows the beach, an unvegetated area above the beach, and the lower portion of the access road to remain unvegetated when the shoreland zoning rules require a 50-foot vegetative buffer, a natural meadow, along the entire shoreline.
2. The approved plan does not require the developer to fully implement a phosphorus control plan to control stormwater runoff to protect West Harbor Pond, which the Maine Department of Environmental Protection classifies as a "threatened lake" because it is "sensitive to additional phosphorus inputs due to the lake's hydrology and threats in the watershed." Maine DEP also classifies the Pond as a "lake most at risk from new development."
3. The approved plan fails to clearly delineate responsibility for establishing the required 50-foot buffer along the top of the property where it abuts Lakeview Drive, a part of the property currently covered by an asphalt parking lot. A key question is whether the developer or the future purchaser will be responsible for removing the asphalt and for properly maintaining the buffer.
4. It is uncertain whether all of the conditions required by the Planning Board will be accurately reflected on the final plan, which has not yet been circulated, and whether those conditions will be properly characterized as formal requirements for all property owners in perpetuity once the development is in place.

The members of the Board looked at the most recent Plat/Map that was presented to the Planning Board, with additional modifications, and Merritt and others who attended the Planning Board meeting, walked everyone through the details of what would be included with meadow and buffer zones, etc. Hence the BoD was left with several options:

1. Appeal and try to enforce full compliance with the legal requirements governing new subdivisions. It was recognized that this could end up in a protracted and expensive effort with an uncertain outcome.
2. In addition, it was recognized that a successful, or initially successful, appeal by the WHPWA might lead the developer to withdraw its application, leaving the property in

its current, troubled shape. Thus, the board had to consider whether to accept what has been approved on the ground that the approved plan, with all its shortcomings, is preferable to the current state of the property and better than the inadequate environmental measures implemented by the Beach Cove Hotel when it was operating.

Prior to the meeting, Merritt had contacted the firm of Verrill Dana, which represented the WHPWA when the Oak Grove condominiums threatened litigation, about taking our appeal. However, the proposed cost was too high for our organization, even with vigorous fund raising. The meeting ended about 8:45 with Merritt promising to look further for an affordable lawyer to represent the WHPWA in an appeal.

Post meeting notes:

The next day Merritt emailed members of the Board of Directors to say he was unable to secure an affordable lawyer and asked the board to vote whether to drop the idea of an appeal and let the development go forward according to the plan approved by the Planning Board. All members voted not to pursue an appeal, with one member urging us to keep an eye on the development as it moved forward to ensure they were meeting the conditions of approval.

Respectfully submitted,

Judith Kildow,

Secretary, WHPWA