

Town of Mount Desert Planning Board
Planning Board Meeting Minutes
Meeting Room, Town Hall
6:00 pm, August 10, 2016

Public Present

Noel Musson, Greg Johnston, Alan Sprague, Gwen Doddy Lowit, Brian Lowit, Jean Travers, Ted Bromage, Dorothea Eilsen, Vicki VanDenburgh, Jim Russell, Matt Morehouse, Erik Dunleavy

Board Members Present

Joanne Eaton, Chairman Bill Hanley, Meredith Randolph, Lili Andrews, Dave Ashmore, Beth Renault

Also present was Recording Secretary Heidi Smallidge

I. Call to Order

Chairman Hanley called the meeting to order at 6:00 pm. Voting members were noted.

II. Approval of Minutes

June 14, 2016: Approval of Minutes were tabled.

July 13, 2016: Ms. Eaton moved, with Mr. Hanley seconding, to approve the Minute as amended. Motion approved 4-0.

July 27, 2016: Ms. Eaton moved, with Ms. Renault seconding, to approve the Minutes as presented. Motion approved 4-0.

III. Subdivision Application(s):

Public Hearing:

A. Subdivision (#001-2016)

OWNER(S): Richard D. Irvin, Jr.

APPLICANT: Greg Johnston

LOCATION: Woods Road/Off Ober Mills Road, Mount Desert

TAX MAP: 012 **LOT(S):** 013-029 **ZONE(S):** Rural Woodland 3

PURPOSE: 4 Lot Residential Subdivision

Ms. Eaton confirmed adequate public notice. Abutters were notified.

Noel Musson provided an overview of the proposed subdivision. He distributed an updated plan.

Changes made to the plan since the Completeness Review include:

- Landowners' names were updated.
- The wetland on Lot 4 has been added to the plan. Some easement covenants requested have been added.
- The language for the paths that allows access to the trail system was included.

- 1 - Covenants added as requested include:
 - 2 ○ Owners of Lots One through Three will be required to join the Ober Mill
 - 3 Road Association
 - 4 ○ The owner of Lot Four will be required to join the Woods Road Association.
 - 5 ○ Primary use of the lots will be residential.
 - 6 ○ Secondary electrical will be underground.

7
8 With regard to electricity Mr. Musson explained what sections of line would be above
9 ground and what sections would be below. Mr. Musson said the decision on poles was
10 based on factors such as cost, impact to the road, and potential removal of trees.

11
12 Chairman Hanley opened the discussion to the public.

13
14 Alan Sprague, President of the Ober Mill Road Association, stated that the Ober Mill
15 Road Association will require Hemlock Lane lot owners to apply for road association
16 membership. Further, the Ober Mill Road Association will require lot owners to pay an
17 assessment fee for maintenance of the Ober Mill Road whether they are members of
18 the road association or not. Additionally lot owners will be required to pay for damages
19 they cause to Ober Mill Road.

20
21 Mr. Sprague noted the three telephone poles planned for Hemlock Lane were not
22 acceptable to the Ober Mill Road Association. Mr. Sprague researched the cost of
23 underground lines, per the cost of poles. He agreed that underground lines were more
24 expensive than poles but suggested the sellers add the extra cost to the price of the lots
25 to offset the expense. Mr. Sprague added that maintenance of the poles will also cost
26 lot owners \$180.00 per year, which would accumulate over the years. He suggested
27 that the poles could, over time, end up more expensive than underground utility lines.
28 Moreover Mr. Sprague reported Ober Mill residents were also concerned with the
29 aesthetics of the poles. The Road Association has a quality of life covenant in their
30 bylaws. They want the lines to be underground.

31
32 Ted Bromage, a resident on Woods Rd. noted the cost of \$180.00 per year with Emera
33 was optional to residents. Mr. Sprague said that Emera conveyed to him that if lot
34 owners did not opt to pay the plan, the cost would fall on their road association.

35
36 Ms. Andrews asked for clarification on whether Mr. Sprague felt there was a question of
37 whether the new lot owners would be allowed to join the Ober Mill Road Association.
38 Mr. Sprague noted the Road Association interprets its bylaws to mean the road
39 association includes nine lots and the bylaws make no mention of allowing new
40 members. Chairman Hanley pointed out that the newly revised covenants required
41 joining the road association. Mr. Johnson said whatever the rules are deemed to be,
42 the new lots and lot owners would abide by them. The new lot owners have rights of
43 way over Ridgewood, Ober Mill, and Hemlock Lane. Mr. Musson stated the reason to
44 join a Road Association is to share the cost of the maintenance of the road. It would be
45 of benefit to the association. The applicant has no intention of trying to change the
46 Ober Mill Road Association bylaws.

1
2 Ms. Randolph saw new members sharing the cost as an inherent benefit to the road
3 association. Mr. Sprague said the current lot owners do not want to be involved with
4 power lines.

5
6 Mr. Bromage mentioned that there's a requirement to join the Woods Road Association,
7 and it's been of benefit to the owners.

8
9 Woods Road Lot Owner Vicki Vandenburg suggested the Hemlock Lane lots could
10 create their own Road Association. Mr. Johnson acquiesced that if Ober Mill Road
11 Association would not accept the new lots, then the residents of Hemlock Lane will in all
12 likelihood create a road association of their own.

13
14 Mr. Ashmore stated the covenant on the plan would need to be rewritten to reflect that.
15 Mr. Johnson suggested changing the wording to reflect that the lot owners will have to
16 apply to the association.

17
18 Mr. Sprague felt that if Hemlock Lane had buried utility lines, the Ober Mill Road
19 Association might be more inclined to allow them to join the Road Association because
20 road conditions would then be equal. Mr. Musson pointed out that rules can be created
21 to cover the differences between the roads and how they would be treated.

22
23 Mr. Johnson said that there have been a number of lot additions to the Ober Mill Road
24 area and other lots have been added to the Road Association as the area has grown.

25
26 Erik Dunleavy stated such a change would require changing the bylaws and the Road
27 Association can only change bylaws at an annual meeting. The next meeting would be
28 June or July of 2017.

29
30 Jim Russell, a resident of Woods Road, reiterated that additional lots have been added
31 to the subdivisions. He said property owner Dave Irvin included a covenant stating new
32 lots shall become members of the Woods Road Association. Bylaws were amended to
33 accommodate the change. Additionally there have been other changes to the
34 subdivision resulting in the addition of Road Association members. His experience is
35 that when new lot owners are welcomed and included, the area benefits in a variety of
36 ways.

37
38 Ms. Andrews noted that the Planning Board's interest is to ensure that someone is
39 maintaining the road.

40
41 Mr. Johnson assured the Board that the developers will retain the road and maintain it
42 should the road not be accepted. He added that the Woods Road residents have
43 secondary underground wiring leading to their homes. This eliminates overhead
44 crossing of wires from the poles. He presented pictures of Hemlock Lane and pointed
45 out that the underground lines would run at length up Hemlock Lane and around a
46 corner before the poles would be used. The Ober Mill Road residents would most likely

1 not see the Hemlock Lane poles from Ober Mill Road.
2

3 Mr. Musson added that while he didn't have the cost of installing underground utility
4 lines, he estimated that it was significant; more than Mr. Sprague's estimates. Mr.
5 Musson's primary concern was to allow Ober Mill Road to remain free of the visual
6 impact of poles by running underground line a distance up Hemlock Lane. Another
7 concern was cutting trees for lines, and also disturbing root systems with underground
8 line installation.
9

10 Brian Lowit, a resident on Ober Mill Road asked whether the utility poles would be past
11 their property. Mr. Johnson affirmed the first pole would be past their property.
12

13 Mr. Dunleavy noted that unimproved lots are not charged, forcing the Road Association
14 to pay for maintenance like plowing. Mr. Bromage noted that Woods Road residents all
15 pay a fair share for maintenance like plowing.
16

17 Mr. Johnson noted that the Board can set conditions on the lots. The Board can
18 establish the condition that should the Ober Mill Road Association choose not to include
19 the Hemlock Lane lots in their Road Association, the plat would be revised, and
20 evidence of a Hemlock Lane Road Association Agreement would be produced.
21

22 Mr. Dunleavy suggested this was an effort to force the Ober Mill Road Association to
23 accept additional lots. Mr. Johnson assured Mr. Dunleavy that was not his intention.
24 The Planning Board could not force a Road Association to accept a lot; the Planning
25 Board has no jurisdiction over Road Associations.
26

27 Ms. Andrews suggested the covenant could say that the owners of Lots One through
28 Three will be responsible for maintaining Hemlock Lane. Ms. Eaton suggested adding
29 to the statement the option to make their own agreement for maintenance.
30

31 Ms. Randolph noted the lots are on a road of their own. If the Hemlock Lane
32 subdivision doesn't adequately take care of their road, it only impacts themselves.
33

34 Ms. Andrews hoped that each deed would have covenants requiring them to maintain
35 their road.
36

37 Mr. Johnson felt the Board's concern is that the road is maintained. Whether by joining
38 the Ober Mill Road Association or creating their own association is beside the point.
39 Chairman Hanley asked whether the Board could require wording be added to a deed.
40 Mr. Johnson suggested wording on the plan requiring lot owners to be responsible for
41 maintaining the road, eliminating the details of exactly how. Mr. Ashmore added there
42 were statutes governing the creation of road associations and joining them.
43

44 Mr. Bromage noted a State law stated that if (for example) two of a three-lot subdivision
45 decide to pay for maintenance, the third lot owner is required to contribute equally as
46 well.

1
2 Ms. Andrews wondered if asking the Maine Municipal Association for guidance would
3 be prudent.

4
5 A review of parts of the Ober Mills Road Association bylaws was made.

6
7 Chairman Hanley clarified that the Board is only trying to ensure the road is maintained.
8 The Board is not trying to require membership to a particular Road Association. Mr.
9 Musson agreed that the specifics of Road Association membership was not the
10 prerogative of the Board, but wording can be added to the plan if deemed necessary.

11
12 Chairman Hanley inquired how maintenance was addressed in the application. Mr.
13 Johnson noted the subdivision stated in the application that the applicant was willing to
14 do their fair share of the maintenance.

15
16 Mr. Johnson reiterated that the covenant on the plan currently states the owners shall
17 join the Ober Mill Road Association. The options were to keep the wording until the lot
18 owners were rejected by the road association and then change it, or change the
19 wording now to a blanket statement saying the new lot owners shall contribute to the
20 maintenance of the road.

21
22 Mr. Russell felt the Woods Road Association would want Lot Four to become a
23 member. He requested wording that requires Lot Four to join the Woods Road
24 Association be kept in the plan.

25
26 Mr. Sprague felt the conversation was not finished with regard to a separate road
27 association. He stated that the utility poles are still an issue. He mentioned that utility
28 poles on Hemlock Lane sets a precedent for utility poles elsewhere in the area. He felt
29 the Board was rushing their decision and hoped the decision would not be made till after
30 the Board had a chance to visit the site. Chairman Hanley disagreed, pointing out there
31 has been site a visit and this particular meeting is the third meeting held discussing the
32 issue; the last meeting being an extensive Completeness Review meeting. He asked
33 the other Board Members their feelings.

34
35 Ms. Eaton agreed there were site inspections and pictures of the site have been
36 submitted. The poles will not be seen from Ober Mill Road. She felt that it was not the
37 business of the Planning Board as to whether the Ober Mill Road Association would
38 accept these lot owners or not. Their only concern should be verifying that the road is
39 maintained.

40
41 Mr. Johnson suggested removing the words from the final plan "Lots One, Two, and
42 Three shall be required to join the Ober Mill Road Association".

43
44 Mr. Musson noted the extensive review at the last meeting was to ensure appropriate
45 standards of construction and safety will be met with regard to width of road, or fire
46 access.

1
2 Ms. Andrews mentioned the stormwater plan noted a “homeowners association”. Mr.
3 Johnson noted that if the lot owners have to create an association the line will still apply.
4

5 Ms. Andrews pointed out that a maintenance program is also mentioned in the
6 stormwater plan. Mr. Johnson explained that road maintenance is more than plowing.
7 It included cleaning culverts and ditching as well. Mr. Musson added that every element
8 of stormwater maintenance is not included on the plan, however it is part of the
9 application, and therefore a part of the record of the subdivision agreement. Ms.
10 Andrews asked how a subdivision applicant can be held to the requirements if they are
11 not on the plan. Mr. Johnson stated the refusal to follow through on an appropriate level
12 of maintenance would result in violations of the ordinance.
13

14 Mr. Johnson suggested that the plan should say the road is being maintained by lots
15 One through Three.
16

17 Mr. Sprague stated the lot owners would also be required to pay a fee to the Ober Mill
18 Road Association for use of their road.
19

20 Mr. Musson said this would not be included on the plan. Mr. Sprague insisted it must be
21 made clear. Mr. Ashmore noted there are State laws regarding Road Associations
22 stating who is required to join and who is required to pay.
23

24 Ms. Randolph felt that the Board should be able to ensure that the Hemlock Lane
25 subdivision will not create undue, unfair burden on the Ober Mill Road.
26

27 Ms. Andrews suggested perhaps a legal opinion should be obtained.
28

29 Mr. Johnson said he felt Ober Mill Road Association was suggesting Hemlock Lane
30 residents contribute to road maintenance of the Ober Mill Road. Precedent was that
31 new lots are accepted into the Ober Mill Road Association, and has been proven to
32 work. The applicants have nothing further they can offer other than the commitment
33 that they will contribute.
34

35 Mr. Dunleavy noted that State Law says anyone using a private road is responsible for
36 any damages.
37

38 Mr. Musson stated that there has never been an intention to refuse to participate in
39 maintenance. The application was submitted with the assumption that the precedent for
40 allowing new lots to join would again be followed. He pointed out that the Town’s
41 ordinance doesn’t cover the subject of the current conversation. If the lots are not
42 allowed to join Ober Mill Road Association, then a general statement requiring the lots
43 to maintain the road can be added to the plan. The Board is required to ensure that the
44 standards of the ordinance are being met.
45

46 Chairman Hanley asked if the Board had a consensus on the issue. Ms. Randolph

1 suggested the wording requiring joining a particular road association be stricken from
2 the plan.

3
4 Chairman Hanley pointed out that even if a vote were taken, the plan could not be
5 signed till the wording was changed. Mr. Musson affirmed.

6
7 Chairman Hanley asked whether there were any last comments from the public. Ms.
8 Vandenburg stated that Dave Irvin created the subdivision and when he did he
9 retained the right to grant the use of the road to anyone. This is another reason why
10 she felt it was a benefit to join a road association. Without that connection, she was
11 unsure what the constrictions were.

12
13 Ms. Randolph felt that Lot Four could be required to join the Woods Road Association.
14 She opined that by requiring joining, the road association can better control the level of
15 contribution. It was suggested that the wording be that the lot Four owners shall
16 contribute to road maintenance, and will have to apply to the road association.

17
18 Ms. Randolph added that the same wording could be used for Lots One through Three
19 with regard to the Ober Mill Road Association. Mr. Dunleavy suggested deleting all
20 mention of Ober Mill Road Association from the wording. Ms. Randolph cautioned that
21 removing all mention of the road association allows the lot owners to bypass joining
22 completely. Requiring lot owners to apply gives the power to the road association.

23
24 There were no further comments from the public.

25
26 Chairman Hanley closed the public hearing.

27
28 Ms. Andrews asked if the cul de sac that was on more than one lot was shown on the
29 plan. Mr. Johnson pointed it out.

30
31 Ms. Randolph asked whether there were any other issues to be discussed. The
32 additional items requested were mentioned.

33
34 Mr. Musson noted the right of way. In looking at the rules regarding centering on the
35 right of way, there is no provision in the ordinance regarding centering the road on the
36 right of way, therefore, no requests for waivers were necessary.

37
38 Mr. Johnson noted easement right of ways were updated to include the path
39 descriptions.

40
41 The Board was satisfied the additional items mentioned at the last meeting were
42 adequately addressed in the application.

43
44 **MS. RANDOLPH MOVED, WITH MS. EATON SECONDING, TO APPROVE THE**
45 **APPLICATION WITH THE CONDITION THAT THE PLAN LANGUAGE IS ALTERED**
46 **TO REQUIRE THE LOT OWNERS TO APPLY TO THE ROAD ASSOCIATION AND**

1 THAT THEY MUST CONTRIBUTE TO THE MAINTENANCE OF THE ROADS.
2 MOTION APPROVED 4-0-2 (RENAULT AND ASHMORE IN ABSTENTION).
3

4 It was noted a revised plan would be submitted for signatures.
5

6 **B. Adjournment**
7

8 MS. EATON MOVED, WITH MS. RANDOLPH SECONDING, TO ADJOURN THE
9 MEETING. MOTION APPROVED 5-0-1 (RENAULT IN ABSTENTION).
10

11 Meeting was adjourned at 7:34 pm.
12