



Town of China

571 Lakeview Drive; China, Maine 04358
(207) 445-2014 info@chinamaine.org

Approved by Planning Board by a vote of 3-0 on April 25, 2023

Planning Board Public Hearing and Meeting

Public Hearing/Meeting held in Meeting Room at China Town Office and via ZOOM

April 11, 2023

Begin 6:30 PM

Board members in attendance: Toni Wall, James Wilkens, Natale Tripodi, Walter Bennett

Board members not in attendance: Michael Brown

Attendees: Brent Chesley, Cathy Chesley, Adam Ellis, Tim O'Brien, Robert Bernheim, Patricia Bernheim, Susan Gaylord, Janet Music, Al Music, Tom Lefferts, Elwood Ellis, Mary Ann Constanzer, Larry Constanzer, Nils Garnett (via ZOOM), Norval Garnett (via ZOOM), Russ and Nancy Josephs (via ZOOM), and Scott Forbes (via ZOOM)

Assistant Code Enforcement Officer Nick French - Present

Board meeting opened by Chair Wilkens

Pledge of Allegiance to the American Flag

Chair Wilkens brought Board Member Tripodi into voting capacity.

Review/Approve Minutes March 28, 2023 Meeting

- Chair Wall motioned to approve minutes as written.
- Board Member Tripodi seconded motion.
All in favor. No further discussion.

Public Hearing – Killdeer Heights Subdivision at 436 Lakeview Drive – Adam Ellis on behalf of Tim O'Brien

- Chair Wilkens opened public hearing at 6:33pm and advised members of the public will have the opportunity to speak if they so choose.
- Adam Ellis explained he and his father, Elwood Ellis, are the owners of Downeast Surveying & Development. He advised of the walk through of the property that took place before the public hearing and advised they are working for Tim O'Brien, the owner of the property. Chair Wilkens opened the discussion to the members of the public to voice their concerns and asked them to please state their name and where they live in China before stating their concerns.
- Robert Bernheim explained that he and his wife, Patricia live at 430 Lakeview Drive and their property neighbors 3 of the proposed subdivision lots. He stated that he appreciated the opportunity to state his concerns and to participate in the walk through. Mr. Bernheim advised he greatly respects the right of an individual to decide what to do with their property and does not



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object to that. He referenced the letter that was sent to the Planning Board previously and stated the letter advised of their concerns with the process and the impact on the neighborhood. He continued that where his property abuts on 3 sides, he is concerned with 13 guidelines for subdivisions being met. Mr. Bernheim explained he has not heard how the 13 guidelines were being addressed other than the map that shows the lot sizes and prescribed square footage. Mr. Bernheim explained that Mr. Ellis pointed out the locations of the test pits, but they have yet to see the documentation of when they were done or what they show. He further advised one guideline (7.1) states “will not result in undue water or air pollution...” but there is a huge slope. Mr. Bernheim questioned where is the information that says it will not have an undue effect? Mr. Bernheim referenced guideline 7.2 regarding available water and states Mr. Ellis states the water tested fine but again, there is no documentation. He continued that as a member of the public, he would like to see that information and does not want to just take someone’s word for it, he wants to see what the basis is. Mr. Bernheim cited guideline 7.3 regarding “will not cause an unreasonable burden on existing water supply...” and guideline 7.4 “ will not cause unreasonable soil erosion...”. He continued that the property is a slope and there is not a flat part anywhere except maybe near the road. Mr. Bernheim explained these are guidelines that go with an application, and they have not seen documentation on them. Mr. Bernheim referenced guideline 7.5 “Will not cause unreasonable highway or public road congestion...” and inquired what studies have been done? He continued that they have not seen information. Mr. Bernheim cited guideline 7.6 “will provide for adequate solid and sewage waste disposal.” And states they have not seen the information pertaining to the test pits. Mr. Bernheim advised that on the bottom road, they did not see where the 2 driveways would be located or if there would not be any driveways on the bottom road and the access would be from the top. Mr. Bernheim mentioned guideline 7.8 “will not place an unreasonable burden on the municipality...” and guideline 7.9 “will not have an undue adverse effect on the scenic or natural beauty of the area...” and explained this is another area of concern. He further advised that this could be nimbyism, “not in my backyard” and continued that nimbyism and livability are not necessarily bad things. He advised there is a sense of community there. Mr. Bernheim explained he is the road commissioner for the road association and sees the road issues and knows what the road issues are. He continued that they are not unreasonable people and can have the conversations. He further explained the loss of habitat for wildlife this could cause and understands there is progress and things change over time and there is a need for housing in this post pandemic world. Mr. Bernheim explained that housing has an impact on the of quality of life and mentioned the Town Comprehensive Plan that is currently in development. He states they need to ask themselves the question of what kind of town they want to have in 10-20 years from now? He continued that putting in a 4-lot subdivision raises questions about issues in their own back yard and the precedent that could be set for cluster housing. He advised they have not seen proposals for houses on the lots or if they need to or get to see them as he is not sure of the rules and regulations. Mr. Bernheim referenced guideline 7.11 “the subdivider has adequate financial and technical capacity to meet the above standards.” He cited 7.12 regarding “within 500 feet of any pond, lake, or river...” and explained Mr. Ellis did talk about the buffer but has not seen or heard any information about phosphorous. He explained that in the Land Use Ordinance, there is a huge section on phosphorus, and he has not seen anything in writing. He continued that as an abutter on 3 of the 4 lots, and as a member of the Town of China, they have not seen the information. Mr. Bernheim explained as precedent setting that they can pass a proposal for a subdivision that does not address the 13 guidelines and again



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be consistent with the provisions of the Town of China including soil suitability and phosphorous. Mr. Bernheim explained he understands is a long process but the application that is set forth needs to be completed. He continued that in the public forum he would hope that they would hear what these proposals look like, but these are not seen on the physical map. He further explained he would like to see the proposals and the information and to start the conversation from there. Mr. Bernheim advised the application does not appear to be completed and there are a lot of questions marks. He continued that there is a fairness factor that would be hard to quantify and questioned if it is fair to have something presented to the Board that is not complete? He continued that the burden of the proof is on the applicant and advised of State of Maine rules but questioned where does that leave the neighbors and the Town of China? He further explained they are not unreasonable people and that there was a lodge there. He continued that the lodge was built in 1810 and used to be the barn to the house he lives in until it was moved. He explained they are sensitive to the historical nature. He advised it is about the process and being sensitive to the environment to what we in the Town of China want to in the community. Board Member Bennett asked Mr. Bernheim if the applicant comes back and meets all the requirements, would he have any objections then? Mr. Bernheim responded that he is unsure if he would or not as he has not seen the information. He advised it affords the applicate the ability to fix the issues and comes across as disrespectful to the public and the Planning Board if the application does not have all the information ahead of time. He continued he would like to have time to review and questioned when does the fixing of the application end? Mr. Bernheim explained he is having a problem with the applicant be able to retro correct information which is different than supplemental materials. Board Member Bennett stated they want to understand the concerns they have besides just the application. Mr. Bernheim explained he does not want to anticipate a response until he has seen all the information.

- Chair Wall advised that the Planning Board is aware that Section 7, which are the guidelines that Mr. Ellis need to adhere to, and the application are not complete. She continued to advise that they wanted to really listen to the concerns of the neighbors, and Planning Board knows the application needs a lot of work.
- Susan Gaylord advised she lives at Killdeer Point Road and is an abutter to northside of the property. She advised she is in 100% agreement with Mr. Bernheim, and they are a tremendous disadvantage when they are given no information. She advised with the way the property is now, all wooded, she does have concerns with the amount of water runoff from the ledge. She advised that a culvert was put in to help handle the amount of water. Mrs. Gaylord advised that with developing the property by cutting down trees and putting in lawns, driveways, septic, and wells, that she has concerns with run off. She questioned that if the rain or snow is excessive, what is to keep the water and possibly sewage from running across the road and onto her property? She also stated she has concerns about the road. She explained there are times where it is barely passable and was built for seasonal camps, not year-round homes. She continued that they do not know what the plan is for the road usage. Mrs. Gaylord advise the road is owned by the Killdeer Landowners Association who would be incurring a major increase in money to maintain the road which they are not in favor of. She further advised she has concerns with the phosphorous levels and explained they are trying to clean up China Lakes. She stressed that the need to respect the



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lake and the natural land. Mrs. Gaylord advised she like to view the wildlife and worries about the impact it will have on the wildlife.

- Mary Ann Constanzer who lives at 37 Mountain View Dr states that the ledge is like a waterfall in the Spring or when there is heavy rainfall. She explained that in the Spring, don't drive in and out more than once a day on the Mountain View Road. She advised there is a box at top of road for deliveries. She advised of the issues that they have had with the road and how they installed a large culvert to help with runoff. She continued that there is a lot of run off and is not sure what would happen if the trees were removed. Chair Wall inquired if the road is close to the lake? Mrs. Constanzer advised the road is close to the lake.
- Chair Wall asked if anyone on Zoom that would like to speak? Janet Music explained that she lives above the Constanzers'. She continued that their house does not have a full basement. Mrs. Music advised that neighbors had to blast to install a cellar. She states she is concerned that if they are blasting, what will be the effect the surrounding houses?
- Mrs. Gaylord advised that some are the online attendee are asking the same questions that have already been discussed such as "How can the application be approved if no completed?" and questions concerning water run-off. Chair Wilkens explained they did the walk through and there are questions that will asked of the applicate. He further advised the public hearing is part of the completeness and sometimes they vote not to have a public hearing, but they did in this case because they received some good emails and knew there were concerns. He continued that the application is not complete until the Planning Board reviews and obtains what they need for information. He advised of past applications and explained they do this with almost every application. Chair Wilkens explained many applications they request a letter form the Fire Chief be provided to the Town and is part of the completeness. He further explained the Planning Board votes if the application is complete and ask the questions. Mrs. Gaylord advised part of the frustration is when will everyone know all the information that is being talked about? Chair Wilkens explained they can come to the meeting where they review the conditional use permit, and the information will be reviewed. He advised it is important for important for landowners and neighbors to have all the information. Mr. Bernheim inquired into the process? He explained that when they see the application, he thought the criteria would be met and they would be reviewing. He questioned what the process moving forward would look like? Chair Wilkens advised when there is a subdivision, there are several items, and one is makings sure there is a public hearing. He advised they will ask for information on the guidelines before they go over the permit. Chair Wilkens explained phosphorous load is a major concern living in the Town of China. He further advised it could be the difference between having a roof and a wooded lot and is something that will be asked. Chair Wilkens explained that if something needs to be done, they will put in a condition for it to be done. He explained there is a 30-day appeal of the permit. He further explained they are fact finding. Chair Wall advised this is like a pre-application. Mr. Bernheim stated the letter they received was confusing and thought the application need to be complete when it came to the board. Chair Wilkens explained the applicant was not coming to the Board 2 weeks for the permit but was coming to explained what they would be doing and to determine if the application was complete. Chair Wilkens advised the Planning Board was not going to go through the application without a public hearing. He advised that each permit is different and



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referenced permit of gym granted last meeting. Chair Wilkens gave an example of the width of road regarding emergency vehicles. He continued that if it does get to a permit and met all the criteria, people will know and there will be no issues that the applicate has met the criteria. Chair Wilkens explained subdivisions are different and gave the example of paving the road after the permit which brings in more criteria pertaining to erosion and runoff. He further advised permit would not be issued tonight where they just had a public hearing and a walk through. There are more questions that need to be answered. Chair Wilkens explained the follow the rules and guidelines –

- The question was asked if supplemental information would be made available and if there would be another public hearing before the final decision? Chair Wilkens responded the guidelines are in Section 7 of the Land Use Ordinance. The question was clarified if the answers to the guidelines will be made public before the next meeting. Chair Wilkens explained the answers will be at the meeting when they go over the application and Chair Wall advised will be in the minutes from the meeting. Chair Wilkens advised there will not be another public hearing. Board Member Bennett stated the correspondence will be considered up to review of the permit. Chair Wilkens advised is part of permit.
- Mrs. Gaylord questioned number of soil tests needed and if they should be done at different times of the year? Chair Wilkens explained one is sufficient. Mr. Ellis advised soil test results were submitted in February and confirmed snow will not change the soil.
- Stephanie asked the question of how they can form a response to the answers if they do not have prior notice and will just be at the meeting and in the minutes? Chair Wilkens advised the answers will be given at the meeting for the permit. Stephanie states that as members of the public, they should have prior notice of what is going to be said and if they don't have the answers prior, how do they have the opportunity to respond? Board Member Bennett motioned to allow for public sufficient time to review the answers before the final vote. He would like to extend an extra meeting to give time to review. Mr. Bernheim states he would like to review the information before instead of in the minutes. He continued the paperwork should be public. Board Member Bennett clarified that they would not vote on the application the day received and would vote on at the meeting after to give extra time. Chair Wilkens explained materials are public and at the Town Office for review. Chair Wall explained they will be asking for the materials since they have not seen either. Mrs. Gaylord inquired if information will be online? Assistant CEO French explained is posted on the website. Chair Wilkens advised the public will have the answers the same time the Planning Board does. Board Member Bennett withdrew his motion.
- Chair Wilkens closed public hearing at 7:13pm and thanked the public for their input. He advised they will take their concerns into consideration during their review of the permit.
- Chair Wall advised that all the criteria need to be completed. She advised that they were provided with a sketch but still need proposed layouts of road, and other features such as building and driveways coming off Route 202. Chair Wall explained may need to check with DOT for Route 202 driveways. Chair Wilkens explained would need to check with DOT because would need to



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have a permit for another cut on Route 202 which is a state highway. Chair Wall explained they would need to know proposed driveways on Mount View Road. Chair Wall advised Mount View Road is a private road and there is something in subdivision section of ordinance regarding private road. Chair Wall read section regarding private roads aloud. Chair Wall advised test pits were pointed out and the information has been given to Assistant CEO French however the Planning Board has not seen it. She continued that test pits and septic locations will need to be plotted out. Chair Wilkens advised of 15 criteria on permit applications and explained they will need answers to Section 7 and the 13 guidelines. He continued that they would need to provide information on phosphorous control. Elwood Ellis explained that without knowing what is going to be built there, is not possible to provide some information. Chair Wilkens advised need to have some sort of measurement. Mr. Ellis advised a structure is require for China phosphorous permit and what they are most concerned about is site distance. Chair Wilkens advised can ask for a letter from DOT. Mr. Ellis inquired how to show water supply? Would he be required to letter from well driller stating there is water there? Chair Wilkens explained would need to find out where well is going to be located and if there is acceptable water supply. Chair Wall advised need to refer to phosphorous control ordinance and read Section 5 under subdivisions aloud. She notified the applicate that they are required to provider phosphorous control information. Mr. Ellis explained that the Board is asking for information that they don't know. Chair Wilkens explained this is what they are asked to look for and what they are asked to get information per the ordinance. He is trying to help the applicant and make sure all the guidelines are met so there are no questions. Chair Wall advised that a protentional land buyer would want to know about the amount of runoff from the back slope and soil erosion concerns. Chair Wilkens explained the path forward is to meet the letter to the guidelines. There was question if there is a timeline from the time the map was given? Chair Wilkens explained there is no timeline, and the applicant can come back anytime for a permit if issues are fixed. He continued that the Planning Board will advise to what the issue are and what information is needed and if fixed, can come back for the permit. Assistant CEO French states he as a map that has the test pits plotted on it but has not seen any information from the soil tests. Adam Ellis states he gave the soil test information to Assistant CEO French at the last meeting. Mr. Ellis advised he will send copies to Assistant CEO French of the soil tests. Chair Wilkens inquired to applicant if they understand the guidelines? Mr. Ellis inquired if the Planning Board is looking for a site plan for each lot? Chair Wilkens responded they will need to show where the septic and well would be. Chair Wall advised the 2 bottom lots have ledge which would limits how far back they would be able to go. She continued that is really the well and the septic and where they are in relation to the property lines. Mr. Ellis questioned if a well could be put in wooded buffer? Chair Wilkens states he doesn't see an issue and is away from the road and meets the other criteria. He continued that the wooded buffer good for run off and should check distance for the lake. Chair Wall states is over 500 from the boundary and about 600+ from the lake. Chair Wall inquired into blasting? It was advised there will not be any blasting. Chair Wilkens advised of phosphorous control guidelines and runoff. He advised of the typography and trenching in rockface. He continued that they would need to be careful where the water is coming down and if it stays wet or does it dry out? Assistant CEO French advised of the designated wetlands. There was discussion of the buildability of Lot 2. Chair Wall explained cannot build in wooded lot. Board Member Bennett asked about Lot 2 and if goes out to Killdeer Point? Mr. Ellis advise does not go to Killdeer Point. Board Member Bennett advised that that bottom 2 lots could only exit onto Mountain View Road. Board Member



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Bennett asked if land is part of association and if it needs approval to be subdivided. Mr. Ellis advised is part to association and explained every lot was granted access. Mr. Elwood Ellis advised will have less access and is an improvement over what was originally there. Chair Wilkens questioned if would be part of road association? Mrs. Music advised would not be part of association but would have to pay a yearly fee to maintain the road. Chair Wilkens asked Adam Ellis if he had down what they are looking for? Mr. Ellis asked if a letter for DOT would be sufficient? Chair Wilkens confirmed it would be. Mr. Ellis asked about Fire Department letter and which Fire Department to use. It was advised it would be the South China Fire Department. Mr. Ellis advised he has already sent in request for letter. Chair Wall advised next meeting is April 25th. Adam Ellis explained he will make sure all the paperwork is submitted 10 days before the meeting. Chair Wilkens advised the Planning Board needs to get as much information as possible to be able to make an informed decision and the decision will be posted on the website. Board Member Bennett inquired if subdividing into 4 lots grants any special permission to build any structure or would still need a building permit? It was confirmed a building permit would still be needed. Board Member Bennett questioned if there still could be conditions put on the lot? Are there separate criteria for a subdivided lot versus developing? Chair Wall advised if the subdivision is approved and if someone wants to build on the lot, they will go through CEO for a building permit. Chair Wilkens explained would need to meet criteria. He continued that if it was for a business, it would come to the Planning Board. Chair Wall advised it is written in the deeds that there cannot be a business there. Mr. Ellis advised they would submit a site plan. Board Member Bennett stated he is concerned of the property being stripped. Chair Wilkens explained it cannot be stripped. Chair Wilkens explained about subdivisions.

Chair Wilkens motioned to table discussion on Planning Board ordinance language changes and review of Town Comprehensive Plan to next meeting. Board Member Tripodi seconded motion.

CEO Report

- Assistant CEO French advised of Town office expansion project that will be coming before the Planning Board at the next meeting. Chair Wall questioned if there were any other no new applications? Assistant CEO French advised there are no other applications except the Town office expansion.
- Assistant CEO French advised of email from Mr. Fisher, who is an abutter to the gym. Chair Wall states Assistant CEO French advised Mr. Fisher he will need to go to appeals board and if the Appeals Board sides with Mr. Fisher, the Planning Board will have a public hearing. Board Member Bennett advised of having a good neighbor policy.

Future Schedule and Adjourn

Next Planning Board Meeting: April 25, 2023
Motion to adjourn meeting made by Chair Wall
Motion seconded by Board Member Bennett

There was no further discussion and the motion to adjourn was unanimously approved.

Respectfully Submitted,



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Dawn Kilgore
Planning Board Secretary