



Planning & Development
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Memo

Date: April 27, 2023 Updated 5-12-23
To: Planning Board
From: Michael G. Livingston, Town Engineer/Planner
Re: Perkins Pasture Subdivision – Tax Map 37, Lot 2D
HOA and Sample Deed Document Review

Information Provided:

Perkins Pasture Final Subdivision Plan, Sheet 4 Updated
Perkins Pasture Homeowners Association, Inc. ByLaws Updated
Declaration of Covenants for the Perkins Pasture Subdivision Updated
Sample Deed (with 5 year restriction) Updated
[Sample Deed without 5 year/family restriction provided](#)
[HOA ByLaw amendment document provided](#)

Comments:

- ByLaws: Art II
 - Good plan reference, but needs to be revised/updated to “Final”, ~~Preliminary~~
 - Reference to ~~“unless and until such time as any such facilities may be accepted as public ways or facilities by the Town of Wells, Maine must be removed.~~ Approval and ordinances prohibit Town acceptance. Delete all references to Town of Wells acceptance of Roads and stormwater systems. [Part of ByLaw amendment document provided – assuming the ByLaws have not been formerly established – changes to the original document should be made to address the changes versus a vote to amend the ByLaws.](#)
 - Good description of duties includes ownership of the roads and Open Space Art. III
 - Requirement for mandatory membership upon acceptance of deed needed All other sections typical and good [Part of ByLaw amendment document provided – assuming the ByLaws have not been formerly established – changes to the original document should be made to address the changes versus a vote to amend the ByLaws.](#)

- Declaration
 - Good overall document
 - First Whereas to be updated for “Final” plan and date

- Will Declarant change to Mark J. O'Brien to meet MDEP exemption requirements? Declarant remains as Goldmark, LLC but the 4th "Whereas" allows Mark J. O'Brien also to be the Declarant. Addressed.
- Good requirement for automatic membership
- Restriction to be added that no accessory dwelling units are allowed on any lot Addressed – A. 3. May need to reference allowed on the family lots (1, 8 and 16) per the subdivision approval.
- Restriction to be added that parking in Laney Lane is prohibited. Done, A. 7
- B.1. Delete all references to Town of Wells acceptance of Roads and add "All streets in the subdivision shall remain private roads to be maintained to Town standards by the Developer or Association and shall not be accepted or maintained by the Town." Done - Addressed
- B. 4. Conveyance of the Open Space to the Town or another entity has not been approved as part of the subdivision, to be removed. Delete all references to Town of Wells acceptance of Roads and stormwater systems. Done - Addressed
- C. 1 and 2. Delete all references to Town of Wells acceptance of Roads. Done - Addressed
- Sample Deed (with 5 year restriction)
 - A sample deed with no 5 year restriction to be provided
 - The deed is from Goldmark, LLC. It appears to meet MDEP exemption requirements, three lots must be retained by family members. The entire property needs to be conveyed from Goldmark, LLC to Mark J. O'Brien and the three lots conveyed to family members of Mark J. O'Brien Sample deed still has Goldmark, LLC as the Grantor and should be changed to Mark J. O'Brien – MDEP requirement, Note 17 sheet 4, Town Attorney comments.
 - Exhibit A – refers to Kennebunk vs Wells Corrected
 - Deed should reference with benefit of rights across Laney Lane and Open Space Not addressed

Last covenant references 5 year restriction unless MDEP Site Location approval is granted. This should be removed as recommended by the Town Attorney. Conveyance prior to 5 years would also require a subdivision amendment. Lot #'s 1, 8 and 16 should be inserted.
- Sample Deed (without 5 year restriction)
 - Sample deed is good
 - Will the Grantor be Goldmark, LLC or Mark J. O'Brien?
 - Deed should reference rights across Laney Lane and Open Space

Town Attorney comments were focused on the issue of conveyance to family members from Goldmark, LLC (not a person) to meet MDEP exemptions. No substantial comments on the Declaration or ByLaws.