

Planning Department

Saco City Hall
300 Main Street
Saco, Maine 04072-1538



Emily Cole-Prescott, AICP

City Planner

EPrescott@sacomaine.org

Phone: (207) 282-4191

TO: Saco Planning Board

FROM: Emily Cole-Prescott, City Planner

CC: Drew Gagnon, Gorrill Palmer (Applicant's Engineering Consultant)

DATE: May 15, 2023 (May 16, 2023 Planning Board Meeting)

RE: Subsequent Materials Received After May 16th Meeting Packet Distribution

On Friday (May 12th) evening, after the May 16th Planning meeting packet had been distributed and after the Planning Department had closed for the weekend, the following two letters were received via email:

1. Letter from Sean Turley of Murray Plumb & Murray dated May 12, 2023 Re: Financial Capacity for 321 Lincoln Street, Lincoln Village Subdivision and Request for Reopening of the Public Hearing on Preliminary Subdivision Review
2. Letter from Bill Kany and Saco Citizens of Save Saco Neighborhoods dated May 12, 2023 Re: Lincoln Village located at 321 Lincoln Street, Saco

Planning Staff is providing this memo to: 1.) provide the information to the Board; and 2.) provide information about the process the Board should take if the Board chooses to re-open the public hearing.

If the Board chooses to re-open the public hearing, Staff recommends re-opening for the clear purpose of receiving public comment about financial capacity information and the applicant's information in the May 16th meeting packet: ***"I move to re-open the public hearing to receive public comment regarding the financial capacity information and the applicant's information included in the May 16, 2023 meeting packet."***

If the Board decides to re-open the public hearing, Planning Staff recommends that the Board continue the hearing to the June 6th meeting to provide members of the public opportunity to submit comment on the financial capacity information and the applicant's information included in the May 16, 2023 meeting packet. Therefore, if the Board chooses to re-open the hearing, Staff's recommended motion is as follows: ***"I move to continue the re-opened public hearing to June 6, 2023 for the purpose of public comment on the financial capacity information and the applicant's information included in the May 16, 2023 meeting packet."***

Planning Staff looks forward to addressing the Board's questions at the meeting.

Correspondence Received after May 16th Planning Packet Distribution:

Date Rec'd	Project	Description
05/12/23	321 Lincoln Street	Letter from Sean Turley of Murray Plumb & Murray dated May 12, 2023 Re: Financial Capacity for 321 Lincoln Street, Lincoln Village Subdivision and Request for Reopening of the Public Hearing on Preliminary Subdivision Review
05/12/23	321 Lincoln Street	Letter from Bill Kany and Saco Citizens of Save Saco Neighborhoods dated May 12, 2023 Re: Lincoln Village located at 321 Lincoln Street, Saco

May 12, 2023

Sent by email

City of Saco Planning Board
Alyssa Bouthot, Chair
300 Main Street
Saco, Maine 04072

Re: *Financial Capacity for 321 Lincoln Street, Lincoln Village Subdivision and Request for Reopening of the Public Hearing on Preliminary Subdivision Review*

Chair Bouthot and Members of the Planning Board:

This firm represents Save Saco Neighborhoods (hereinafter “**SSN**”), a group of neighbors who stand united in opposition to the Lincoln Village Subdivision (the “**Subdivision**”), which the applicant, Loni Graiver (“**Graiver**”),¹ operating as Lincoln Street Development, LLC, proposes to construct on a parcel of land between Lincoln Street and Bradley Street that is identified by the City on Tax Map 52 as Lot 19 (the “**Project Site**”).² I write to flag for the Board that (a) the evidence provided by Graiver as to his financial and technical capacity to develop the Subdivision is grossly insufficient to satisfy the applicable ordinance standards (the “**Financial Capacity Standards**”) contained section 188-602 of the City’s Subdivision of Land Ordinance (the “**Ordinance**”) and that, therefore, (b) the Board cannot vote in favor of providing Graiver preliminary subdivision approval. I also write to request that the Board reopen the public hearing at a future meeting in order to provide the public an opportunity to comment on the information provided to the Board by Graiver after the public hearing closed.

I. Financial Capacity

As set forth in the Ordinance, the Board is required, in its review of a proposed subdivision, to evaluate “all relevant evidence” establishing not only that a developer has the financial capacity to “construct” the subdivision, but also to “operate” and “maintain” that subdivision.³

The public policy behind this provision is clear and prudent: the City, not the developer, will ultimately shoulder the costs associated with a failed subdivision should a developer prove unable to complete and operate the subdivision as planned and approved. The danger that a developer will not fulfill the promises made to the Board is especially acute when, as here, the proposed subdivision involves a massive expenditure of funds across several years as changing financial conditions over the development time can render the proposed subdivision unviable.

¹ The original applicant was another entity operated by Graiver, Graiver Homes.

² I submitted an earlier letter to the Board on SSN’s behalf dated September 6, 2022 through which SSN objected to the Board’s consideration of the completeness of the Developer’s application on the grounds that the Board’s review was premature pursuant Code § 188-402(A).

³ Ordinance § 188-602(A).

In recognition of these concerns, the Ordinance obligates the Board to ensure that a developer had demonstrated beyond any reasonable doubt that he can cover the full costs of the proposed development by requiring the Board to (a) consider whether “the applicant has sufficient funds or has committed access to sufficient funds to undertake the project”⁴ and (b) deny a proposed subdivision if the applicant has “not proven the financial and technical capacity to implement the plan.”⁵

Thus, the Financial Capacity Standards impose a simple, exacting requirement: a developer’s failure to establish either that the he or she *has*, in hand, sufficient funds to complete the project or “*committed access*” to such funds is fatal to an application for subdivision approval.⁶

Consequently, because Graiver has not satisfied this standard, the Board is barred from providing final approval of the Subdivision.

The totality of the evidence submitted by Graiver related to his purported financial capacity to complete the Subdivision is sparse and unpersuasive. Graiver has filed three (3) letters from Karl Suchecki of Gorham Savings Bank (“**GSB**”), none of which satisfy the Financial Capacity Standards. The first of these letters, dated July 12, 2022 (the “**First Letter**”)⁷ includes the following representations by Suchecki on behalf of GSB:

1. GSB has a “commercial banking relationship” with Graiver.
2. GSB has “reviewed the preliminary information” for the Subdivision.
3. GSB does “*not* commit[] to lend funds” to Graiver to finance the Subdivision.
4. GSB “strongly believe[s],” without indicating the basis for its belief, that Graiver has the necessary “experience and financial capacity” to “successfully develop” the Subdivision.

The First Letters fails to satisfy the Financial Capacity Standard because it does not establish, as a matter of fact, that Graiver has sufficient funds to “construct, operate and maintain the development.”⁸

⁴ Ordinance § 188-602(B).

⁵ Ordinance § 188-602(C).

⁶ Although the Ordinance provides the Board the authority to attach conditions to “ensure that a developer has the financial and technical capacity to meet subdivision regulations,” the Board is expressly prohibited from approving a development if the financial capacity standards have not been satisfied *at the time of approval*. Compare Ordinance § 188-602(D) (authorizing the attachment of conditions) to Ordinance § 188-602(C) (“The Planning Board *shall not approve* a plan if the applicant has not proven the financial and technical capacity to implement the plan.” (emphasis added)).

⁷ The First Letter is attached as Exhibit A.

⁸ Ordinance § 188-602(A).

Graiver attempted to satisfy the Financial Capacity Standards a second time by having GSB file another letter on October 25, 2022 (the “**Second Letter**”).⁹ The Second Letter is also *not* a commitment to lend Graiver the necessary funds to build out the Subdivision. Instead, the Second Letter reiterates much of the substance of the First Letter, adding only that the estimated *infrastructure* (not total) cost of the project is \$27,439,863 and that Graiver has “sufficient funds *or* access to sufficient funds” not to complete the Subdivision, but, rather, to satisfy the “equity requirements” to *potentially* receive a loan for some unspecified amount.¹⁰ Thus, the Second Letter, like the first, violates the Financial Capacity Standards because it fails to establish that Graiver has the funds in place to “construct, operate and maintain” the Subdivision.

Finally, in advance of the Board’s May 9, 2023 hearing on the Subdivision, Graiver had GSB sent a third letter dated April 12, 2023 (the “**Third Letter**”).¹¹ That letter closely echoes its predecessors, stating:

1. GSB continues to have a “commercial banking relationship” with Graiver.
2. GSB has “reviewed the preliminary information” for the Subdivision—but, apparently, not any of the more recent plans for the Subdivision.
3. The infrastructure *alone* for the Subdivision will cost \$28,949,863.
4. GSB does “*not* commit[] to lend funds” to Graiver to finance the Subdivision.
5. GSB “strongly believe[s],” for unspecified reason(s), that Graiver has the necessary “experience and financial capacity” to “successfully develop [the Project Site] and complete the project on time and on budget.”

The Third Letter, like its predecessors, again fails to satisfy the Financial Capacity Standards. In fact, the letters have the opposite effect: they establish that between the issuance of the First Letter in July 2022 and the Third Letter in April 2023, (a) Graiver *failed to secure financing* for the Subdivision from GSB; (b) no bank or other financial institution has committed to financing the Subdivision; and (c) Graiver does not have access to any other source of funds to see through his plans for the Subdivision. As a result, Graiver has failed to carry his evidentiary burden as to the Financial Capacity Standards and the Board must deny the Subdivision.

⁹ The Second Letter is attached as Exhibit B.

¹⁰ At no point does GSB represent that the bank has the capacity to finance the entirety of the Subdivision, thereby rendering GSB’s statement that Graiver has adequate funds to pay only the 20%–25% up front for a loan of some amount especially unconvincing as to Graiver’s financial capacity.

¹¹ The Third Letter is attached as Exhibit C. The obvious inadequacies of the First Letter and Second Letter, which, as explained above, are almost identical to the Third Letter, are discussed in detail in a letter provided to the Board by Bill Kany prior to the Board’s April 4, 2023 meeting. Kany’s letter is attached hereto as Exhibit D. Kany provided with his letter an email from the City Attorney, Tim Murphy dated Jun 7, 2018, in which the City Attorney explains at length why letters like those submitted by Graiver are wholly insufficient to satisfy the Financial Capacity Standards. The City Attorney’s email is attached hereto as Exhibit E. It is worth pointing out that the City Attorney’s opinion related to a development—the Ecology School—that is nowhere near as complicated or costly as the Subdivision; still, even with those lower stakes, the City Attorney advised the Board in that instance to not find that the developer had satisfied the Financial Capacity Standards.

At some point prior to the Board's May 9, 2023 meeting, Attorney Phil Saucier sent an email to the Board stating that the Third Letter did not constitute a "commitment to lend funds" by GSB to Graiver but that, despite the lack of any promise that GSB would finance the Subdivision, Attorney Saucier believed that the Third Letter was "sufficient to meet the requirements in Section 188-602." The justification and/or reasons for his conclusions are not provided, and Attorney Saucier did not appear at the May 9, 2023 meeting to explain his position on this matter.¹² Attorney Saucier's one-sentence comment on whether Graiver has satisfied Financial Capacity Standards, which was prepared *for* the Board's benefit and *not* submitted by Graiver as evidence into the record, is simply an inadequate basis for the Board to conclude that Graiver has carried his burden of proof as to his ability to fund the Subdivision.

In discussing this issue, the Board has spoken at times as if it will have an opportunity to reconsider its position on Graiver's financial capacity because the Subdivision is a "phased" project. This is inaccurate. What the Board has before it is an application for the *entire* Subdivision, which means that Graiver needs to demonstrate his financial capacity to *complete* the *entire* Subdivision *prior to* receiving preliminary approval—not just that he may have money to break ground and/or construct the necessary infrastructure.¹³ The Board's review at this time is its only real opportunity to ensure that the City will not be left with a partially-completed Subdivision should Graiver prove unable to obtain the substantial financing he needs to "construct, operate and maintain" the Subdivision. Therefore, the Board cannot allow the Subdivision to proceed based on the idea that it can revisit this issue later; Graiver is obligated to satisfy the Financial Capacity Standards at this time.

II. The Public Hearing on Preliminary Approval

It is my understanding that the Board received a great deal of information relevant to its decision as to whether to grant preliminary approval to Graiver after the close of the public hearing portion of its May 9, 2022 meeting. As you are aware, SSN and other interested parties have been actively involved in providing feedback on Graiver's compliance with the universe of applicable ordinance standards. Because members of SSN and the public at large did not have an opportunity to comment on the representations made by Graiver and his agents near the conclusion of the meeting,

I therefore ask that the Board table this matter at its May 16, 2023 and reopen the public hearing on a future date. Although the Board is required to hold an additional public hearing as part of its final review process,¹⁴ that last phase of review tends to be far more cursory than the process through which the Board decides to grant or deny preliminary approval. Therefore, the Board should reopen

¹² The remainder of the email recites the Financial Capacity Standards and reminds the Board that it has the ability to attach conditions related to financial capacity to ensure Graiver "meet subdivision regulations"—not that he has sufficient capacity to complete the Subdivision.

¹³ Whether a developer intends to build out a subdivision in "phases" is not equivalent to the Board providing "phased approval[s]" for that subdivision, as that concept is discussed and defined in Ordinance § 188-604. The Board has not been asked to approve the Subdivision in phases pursuant to Section 188-604; rather, the Board has before it an application to develop the Subdivision in full, thereby depriving the Board of another opportunity to reassess down the road whether Graiver has the financial capacity to see the Subdivision through to completion.

¹⁴ Ordinance § 188-503.D.

the hearing for the limited purpose of providing City residents a chance to comment on the additional information provided by Graiver.

Thank you for your time and attention to this matter. Please reach out with any questions.

Sincerely,



Sean R. Turley, Bar No. 6351
sturley@mpmlaw.com
MURRAY PLUMB & MURRAY
75 Pearl Street, P.O. Box 9785
Portland, Maine 04104-5085
(207) 773-5651



July 12, 2022

Re: **Letter of Financial Capacity – 321 Lincoln Street Development, LLC**

To whom it may concern:

Please allow this letter to serve as confirmation of the commercial banking relationship currently in place for Graiver Homes, Inc. and its president, Loni Graiver, principal of 321 Lincoln Street Development, LLC. Gorham Savings Bank has supported Graiver Homes, Inc., for similar projects in recent years.

Gorham Savings Bank has reviewed the preliminary information for the proposed single-family and multi-family project known as “Lincoln Village” at 321 Lincoln Street Saco, Maine.

This letter is not a commitment to lend funds, however, we strongly believe that Graiver Homes, Inc. & 321 Lincoln Street Development, LLC have the development experience and financial capacity and based on our review of the preliminary scope of proposed construction and cash flow, we believe Graiver Homes, Inc., has the necessary components to successfully develop this site and complete the project on time and on budget.

If you have any questions or require further information, please feel free to contact me at (207) 222-1492.

Sincerely,

A handwritten signature in black ink that reads "Karl Suchecki".

Karl Suchecki

Executive Vice President



October 25, 2022

Planning Board
Town of Saco
300 Main Street
Saco, ME 04072

Re: Letter of Financial Capacity – 321 Lincoln Street Development, LLC

To whom it may concern:

Please allow this letter to serve as confirmation of the commercial banking relationship currently in place for Graiver Homes, Inc. and its president, Loni Graiver, principal of 321 Lincoln Street Development, LLC. Gorham Savings Bank has supported Graiver Homes, Inc., for similar projects in recent years.

Gorham Savings Bank has reviewed the preliminary information for the proposed single-family and multi-family project known as “Lincoln Village” at 321 Lincoln Street Saco, Maine with an estimated infrastructure cost of \$27,439,863.

This letter is not a commitment to lend funds, however, we strongly believe that Graiver Homes, Inc. & 321 Lincoln Street Development, LLC have the development experience and financial capacity, based on our review of the preliminary scope of proposed construction, to successfully develop this site and complete the project on time and on budget. Furthermore, Graiver Homes and Loni Graiver have sufficient funds or access to sufficient funds to meet the equity requirements that would be required for financing this project.

If you have any questions or require further information, please feel free to contact me at (207) 222-1492.

Sincerely,

A handwritten signature in dark ink that reads "Karl Suchecki".

Karl Suchecki
Executive Vice President



April 12, 2023

Planning Board
Town of Saco
300 Main Street
Saco, ME 04072

Re: Letter of Financial Capacity – 321 Lincoln Street Development, LLC

To whom it may concern:

Please allow this letter to serve as confirmation of the commercial banking relationship currently in place for Graiver Homes, Inc. and its president, Loni Graiver, principal of 321 Lincoln Street Development, LLC. Gorham Savings Bank has supported Graiver Homes, Inc., for similar projects in recent years.

Gorham Savings Bank has reviewed the preliminary information for the proposed single-family and multi-family project known as “Lincoln Village” at 321 Lincoln Street Saco, Maine with an estimated infrastructure cost of \$28,939,863.

This letter is not a commitment to lend funds, however, we strongly believe that Graiver Homes, Inc. & 321 Lincoln Street Development, LLC have the development experience and financial capacity, based on our review of the preliminary scope of proposed construction, to successfully develop this site and complete the project on time and on budget. Furthermore, Graiver Homes and Loni Graiver have sufficient funds or access to sufficient funds to meet the equity requirements that would be required for financing this project.

If you have any questions or require further information, please feel free to contact me at (207) 222-1492.

Sincerely,

A handwritten signature in cursive script that reads "Karl Suchecki".

Karl Suchecki
Executive Vice President

April 4, 2023

Emily Prescott, Saco City Planner
Alysa Bouthot, Chairperson, Saco Planning Board
Members of Planning Board
Saco City Hall
300 Main Street
Saco, ME 04072

RE: Lincoln Village located at 321 Lincoln Street, Saco

Dear Ms. Prescott, Chairperson Bouthot and Members of the Planning Board:

My name is Bill Kany. I live at 3 Blackberry Lane in Saco. I would like to address the developer's obligation to establish that it has both the financial and technical capacity to meet all the subdivision standards pursuant to Section 188-602 of Saco's Subdivision Ordinance including the ability to construct, operate and maintain the development.

Section 188-602(A)(1) requires evidence of the developer's prior conduct. In the materials submitted to the Board there is no such evidence of the developer's prior developments. Certainly, the Gorham Savings Bank's October 25, 2022 letter does not satisfy that requirement.

Section 188-602(B) requires evidence of financial capacity in the form of a financial institution letter stating it knows the developer and it has sufficient funds or committed access to sufficient funds to undertake the project. The letter has to reference the cost of the project and include a corresponding cost estimate. The Gorham Savings Bank letter references an estimated infrastructure cost of \$27,439,863.00. There was no cost estimate attached to the letter which is required under the ordinance. Such an estimate would provide verification regarding the bank's statement of cost.

More importantly, that cost reference does not satisfy the ordinance. The requirement is a cost of the project, not just the infrastructure. Infrastructure costs may be the project cost for subdivisions from which only lots will be sold. However, this project includes building 288 condominiums, along with duplexes and single family homes. That is this project and that appears to be this developers' normal course of business. The figure of \$27,439,863.00 has none of the required backup, and it is not the cost of the project. The cost of this project includes completing the units. If one assumes each unit is on average 1,200 square feet, and conservatively construction costs are \$225.00 per square foot, then the cost of building the structures totals \$89,640,000.00. Add the infrastructure costs to that number totals \$117,079,863.00 excluding acquisition costs, impact fees and perhaps other unknown costs.

Gorham Savings has not said this developer has the financial capacity to fund a \$118,000,000.00 project, and frankly, I am not sure there are many developers in this state with such financial capacity. In addition, Gorham Savings did not commit to loan this developer any money to do this project, never mind committing to loan \$27,000,000.00 or over \$100,000,000.00 to "undertake the project." In fact, if one reviews the Gorham Savings letter you will see that the bank is not committing to loan the

developer any money, and it “believes” the developer has the experience and capacity, based on the bank’s preliminary scope of the project, which we know does not include the total cost of the project.

The letter falls far short of the required evidence of financial capacity. In support of that assertion please see the attached June 7, 2018 email from Saco City Attorney, Timothy Murphy, to former City Planner, Bob Hamblen, analyzing a substantially similar letter submitted on behalf of the Ecology School associated with its Simpson Road project. Attorney Murphy describes these vague financial capacity letters as “merely a statement of well wishes for the project.” Attorney Murphy goes on in describing a letter similar to the Gorham Savings letter: “It makes no promise to fund, and it shares no background that could offer comfort that this applicant is adequately capitalized or funded such to complete a large scale project.” Attorney Murphy goes on to say the following: “Like it or not, the Ecology School project is significant in size, cost and scope. It is no mere 4 lot subdivision. Instead the School proposes up to 8 million dollars in new construction, including 2 dormitories and a dining hall/commons However, these undertakings are also significant in scope and in cost, much larger in scale than typical projects seen herein Saco, and it is certainly fair for the Planning Board to ask of the School’s financial capacity to complete this project as promised.”

Lincoln Village is the largest project ever proposed in Saco. It dwarfs the Ecology School in cost and scope. Proof of technical and financial capacity necessitates more than a one page letter of “well wishes”.

As stated at the outset, Section 188-602 also requires “relevant evidence that the developer is able to construct, operate, and maintain the development.” To date, I have seen no evidence of such capacity or ability. It is no secret that this is an extremely wet site which requires a very sophisticated drainage system working properly to prevent acres of impervious surface causing groundwater to flow onto neighboring properties.

If one even assumes that such a system can be designed and built, such systems must be maintained, and the developer has to prove its ability to maintain the system (See Section 188-602). However, we all know this is a condominium. At some point the project will be turned over to a volunteer board of the condominium and the developer will be off to work on other projects. What assurance can be provided that a condo board will have the expertise and the funding to maintain such a drainage system, detention ponds, etc.? The answer is that it is impossible to provide such assurances once the developer finishes and walks away.

Section 188-602(C) says: “The Planning Board shall not approve a plan if the applicant has not proven the financial and technical capacity to implement the plan.” This applicant has failed to satisfy the requirements of Section 188-602 and I would respectfully suggest it will never be able to do so with a project of this magnitude and cost and with an unknown condominium association taking on the huge responsibility of maintaining the development once the applicant is gone.

Sincerely,

William S. Kany

From: Tim Murphy [<mailto:tmurphy@padzilla.com>]
Sent: Thursday, June 07, 2018 1:42 PM
To: Bob Hamblen <BHamblen@sacomaine.org>
Subject: Financial Capacity Ecology School Project

Hello Bob:

You asked me, on behalf of the Saco Planning Board, if a certain project applicant (The Ecology School) has established sufficient basis for a finding of “financial capacity” as it looks to build out a project on the former Mary Merrill Farm off Simpson Road. As you and the Board know, project applicants are often required to show both technical capacity to build out a project and its supporting infrastructure, as well as sufficient financial support/ability to finalize all construction. The purposes of such provisions governing financial and technical capacity are certainly well understood: to assure that a proposed project actually comes to completion, and that projects do not go half built.

As regards the Ecology School project, the requirement to establish financial and technical capacity is set out in Section II, R of the Amended Contract Zone Agreement dated January 29, 2018. The Ecology School has sought to meet that requirement, at least as regards the financial strength element, by forwarding a letter from Bryan Christoforo of Saco Biddeford Savings Institution regarding the proposed project, which letter notes the Bank’s inclination to fund the project. It is reported the project may cost approximately 8 Million Dollars to complete according to documents submitted by the Ecology School. The Board asks if the Letter submitted from Saco Biddeford Savings is sufficient to establish financial capacity to complete an 8 million dollar project.

For the reasons more fully detailed below, my answer would be no. Let me explain.

First, the Bank letter is neither a firm commitment to lend any funds, nor is it an explanation or accounting of the financial assets/accounts of the customer which could be called upon to support a project. Standing alone, without any other documentation, the Bank’s April 25, 2018 letter is merely a statement of well wishes for the

project. It makes no promise to fund, and it shares no background that could offer comfort that this applicant is adequately capitalized or funded such to complete a large scale project.

As you may know, there is a significant difference between a "Letter of Commitment" from a Bank and a less formal expression of support which is what we have here from S&B. A Commitment letter expresses a fixed promise of the financial institution to loan funds or credit provided an applicant can meet express conditions for lending set by a bank or other lender. A letter of support, as we have here, does not bind a lender in any way. It provides no assurances that funding will be found for a project, it sets no terms or contractual commitments as would typically exist in a Commitment Letter.

Further, and as you will note, a letter of support typically includes a good deal of "hedging" verbiage, meaning words that actually denote a non-commitment to lend. In fact, you see that in Saco Biddeford's letter of April 25, 2018 particularly in the final paragraph. It's clear that the Bank is not promising any funds, but is instead only expressing interest in and hope in a project. This is not to say the Letter betrays an intention not to loan, and as you know (and as the Board has seen in the past) these sorts of expression of interest letters are commonly sent out by banks. See the four exemplar's you sent to me on 4 other projects, all of which are essentially similar versions the Saco Biddeford letter here.

In effect, these letters of interest provide a sign of bank interest only, but no measure or indication of Bank intentions or any form of financial commitment. Thus, it is impossible to gain any assurances as to financial capacity from one.

Second, that the Planning Board has previously relied upon letters of interest in the past as evidence of financial capacity means little here for several reasons. First, in any other circumstances this office was not asked to opine if the submitted documentation was sufficient. Second, if the Staff or Planning Board erroneously relaxed zoning standards or requirements on one or more occasions is not reason or cause to continue a practice. Lastly, and most importantly, all projects stand on their own merits. The nature, scale and scope of a project can elevate or mitigate against the level of inquiry and expectations surrounding issues like financial and technical capacity. In other words, the builder of a 4 lot subdivision may be fairly held to provide one set of financial data or guarantee, while the developer of a multi-million dollar hotel project might be obligated to produce a bit more evidence of financial backing. That is not an application of disparate treatment between projects, but rather the sound application of judgment in light off the facts, and of the risk, presented by different undertakings. No Court would find us at fault for expecting more evidence of financial strength for projects of greater size, and greater risk of failure.

This leads me to the third argument. Like it or not, the Ecology School project is significant in size, cost and scope. It is no mere 4 lot subdivision. Instead, the School proposes up to 8 million dollars in new construction, including 2 dormitories and a dining hall/commons, facilities that may serve over a hundred individuals each day. In fact, the School describes creating a "campus" for its programming, all of which sounds interesting and admirable. However, these undertakings are also significant in scope and in cost, much larger in scale than typical projects seen here in Saco, and it is certainly fair for the Planning Board to ask of

the School's financial capacity to complete the project as promised. In this light, you can see it's entirely reasonable to conclude that the Bank's April 25, 2018 letter actually offers no guidance to the question: how does a small non-profit afford such a project, can they "pull it off" successfully.

Past practices are informative, but only to a point. Here, the substantial scale of the project gives pause, and it is merely prudent, not unfair, to expect that this applicant will come forward with significant evidence of its own financial strength, and of the project's level of available funding. How much equity does Ecology School have and hold for this project, and what have plans been made to borrow/secure the rest of the 8 million required. The answers are not known. And, I would opine that the Bank's letter of April 25, 2018 does not help the Board answer these inquiries.

For all these reasons, I would opine that the issue of financial capacity is not resolved. That said, the final decision as to how much weight should be afforded to the April 25th letter rests with the Board, in its judgment, not with this office.

Let me know if I can be of any further help.

Tim Murphy

May 12, 2023

Emily Prescott, Saco City Planner
Alysa Bouthot, Chairperson, Saco Planning Board
Members of Planning Board
Saco City Hall
300 Main Street
Saco, ME 04072

RE: Lincoln Village located at 321 Lincoln Street, Saco

Dear Ms. Prescott, Chairperson Bouthot and Members of the Planning Board:

Save Saco Neighborhoods is writing to express our collective disappointment with the Board's decision to close the public hearing, and the steps and comments that led to that decision, and we would respectfully request that the Board re-open the public hearing.

The Planning Department materials on Saco's website say in pertinent part: "Planning provide [sic] prompt and efficient processing of applications, as well as prompt attention to concerns raised by residents regarding particular developments." While we, as residents, have been accorded the opportunity to submit information and to right to speak at public hearings, frankly, we are not sure we are being heard or even listened to.

The bases for closing the public hearing were disconcerting. While a significant amount of material was submitted that night both by the applicant and the public, including 11 pages of proposed findings of fact and conclusions, a detailed traffic analysis and the May 8, 2023 letter from The Bicycle Coalition of Maine, the Chairperson remarked: "the majority of the information we have been given that is new is from the public and at first glance I have a lot of pages in front of me that look similarly but newly worded compared to past materials we have gotten from them. I don't know that there is new information that is ground breaking that came to light tonight that warrants pushback on reopening to June 6th". Those comments came after other board members had expressed an interest in continuing the public hearing to another meeting to give them time to review the materials, and the board could still vote to close the public hearing at that subsequent hearing if they did not have any additional questions for the applicant or the public.

The Chair's comments also came with little or no time for her to review not only the residents' proposed findings which could have led to questions but with no time to review the traffic study presented by the residents which was quite detailed. Board member Grossman had previously stated: "Isn't the only reason of the public hearing to get more comments from the public" at which point he suggested the board could close the public hearing and still consider this additional information (presumably the documents submitted that night), and then still vote within 30 days apparently not anticipating any questions for the applicant or the public. At that point Matt DiCianni asked, isn't there another public hearing for final approval. The Planner

confirmed that without explaining the significant distinction between what is reviewed at the first and second public hearings. Once he heard there would be another public hearing Matt DiCianni said why not close this public hearing because there is going to be another one. Clearly, once preliminary approval is granted there is little left to advocate for as far as the public is concerned.

Those comments seemed to minimize the significance of anything that had been submitted by the public because why give them another chance to speak and aren't they just rewording what they have already said? Not only did we feel ignored, but after the public was done speaking the applicant and its representative were invited back to the podium to provide more information and to give them the last word with no further opportunity for the public to speak. The Board then voted to close the public hearing, and again invited the applicant back up to speak and to brainstorm on how to sidestep the financial capacity requirement.

After the public was allowed to speak, the applicant's agent got back up and again argued that they had proven compatibility of the project by showing pictures of 6 properties most of which were a half mile away on a radius (not as one drives through several neighborhoods to get to those properties). He made the unique argument that the "neighborhood" for this project should be larger because the Lincoln Village project is so large. He defined the neighborhood as being a circle with a diameter of one mile. The actual term in the ordinance is "neighboring properties" and not just "neighborhood", but it is beyond incredulous to suggest that a neighborhood is an area comprised of a circle one mile across. Presumably if they had to go further to find a handful of buildings to make their argument of compatibility they would have argued that the neighborhood was perhaps two miles across.

We hope it is not lost on any of you that by identifying that the project is so large that it warrants a larger definition of neighborhood, they are actually supporting our argument that this project is not compatible. It is too big, by their own admission.

Of course, by closing the public hearing the public was foreclosed from any opportunity to respond to the applicant's comments made after we spoke and after the public hearing was closed, but the Board gave the applicant the opportunity to respond to all the points made by the public. That is contrary to fundamental fairness. Why are we as residents not accorded the same courtesy as that given to outside developers?

The most troubling exchange which occurred after the public was prevented from speaking anymore surrounded the financial capacity issue addressed in 188-602 of the subdivision ordinance. The plain facts are that the developer has neither shown it has a loan commitment to construct the project (188-602 (B)) nor has sufficient funds to fund the project (188-602 (B)). The ordinance requires a letter (188-602 (B)), but the applicant produced the same letter it had provided two times before, and it brought its banker who said no more than the letters had said already. So clearly it was still a problem. How can the city get around the issue?

Apparently someone suggested using a phasing approach. To be clear, while the developer may be building this project out in phases it is not seeking "Phased Approval" under 188-604. The applicant wants the whole project approved so 188-602 applies to the whole project and not just to the applicant's arbitrary phases. Furthermore, Section 188-906 requires

the developer to finish most, if not all of the infrastructure, before it can pull any permits to build buildings. Those improvements are listed in 188-906(C) and include the sewer lines and pump station, water lines, electric service, all drainage facilities, roads with binder course paving, etc. If all of those improvements need to be completed before the applicant can pull one permit then it has to at least show about \$29,000,000.00 in committed funds or cash to pay for all of that. It is not appropriate to phase that financial capacity to get around 188-602. Of course, those were points the public was not allowed to make other than after the fact in this letter.

In addition, the Board would not even consider the public's point about the traffic study instead deferring completely to the applicant's agent and the peer review engineer who is using an outdated manual. The Maine Department of Transportation Traffic Movement Permit (TMP) has not been issued yet, and it will be a condition of approval. Assuming the draft TMP is approved it will be appealed because it fails to utilize the required criteria. Saco should demand the use of the correct criteria, but it is not.

The Planning Board is supposed to "ensure compliance with the zoning ordinance and subdivision regulations" along with ensuring consistency with Saco's Comprehensive Plan. We cannot ask you to do more than that, but it does seem reasonable to ask that you consider what we have to say and carry out ensuring such compliance. Please consider re-opening the public hearing so that we have an opportunity to address the applicant's points.

Sincerely,



Bill Kany and Saco Citizens of Save Saco Neighborhoods