

# CITY OF PORTLAND, MAINE

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## PLANNING BOARD

Bill Hall, Chair  
Joe Lewis, Vice Chair  
Lee Lowry, III  
Carol Morrissette  
Michael J. Patterson  
David Silk  
Janice Tevanian

August 10<sup>th</sup>, 2010

Lester S. Berry, PE  
BH2M  
28 State Street  
Gorham, ME 04038

Frank Didonato Sr.  
87 Skylark Road  
Portland, ME 04103

RE: **Amendment to an Approved Subdivision to Create 2 Phases  
Skylark Commons 17-lot Subdivision**

Address: Skylark Road and Coolidge Avenue in the vicinity of 87 Skylark Road  
CBL: 347 D001  
Application ID: HTE 10-98900002 (amendment to #2004-0252)

Dear Mr Berry and Mr Didonato,

On July 27, 2010 the Portland Planning Board approved the amendment to phase the approved 17-lot Skylark Commons Subdivision to create a Phase I of 7 lots and a Phase II of 10 lots as shown on Sheet 1 *Amendment to the Approved Subdivision Plat dated July 22, 2008* and Sheet 3 *Roadway Profile Skylark Road Phase I*, both dated 7.20.2010. The Planning Board voted 4-0 (Lewis, Hall and Patterson absent) to approve the amendment with the following motions and conditions as presented below:

### PHASING

On the basis of application, plans, reports and other information submitted by the applicant and on the basis of the findings and recommendations contained in Planning Report #25-10 as relevant to standards for subdivision, and other regulations and the testimony presented at the Planning Board hearing, the Planning Board voted 4-0 (Lewis, Hall and Patterson absent) that the proposed Amendment to the Approved Subdivision Plat, which amends the approved subdivision by dividing it into two phases (of 7 lots and 10 lots respectively) (phase one as referenced on plans Sheet 1 *Amendment to the Approved Subdivision Plat dated July 22, 2008* and Sheet 3 *Roadway Profile Skylark Road Phase I Rev 7.20.2010*, and phase two as referenced on the plan Sheet 1 *Amendment to the Approved Subdivision Plat dated July 22, 2008*) is in conformance with the subdivision standards of the City's Land Use Ordinance (including Section 14-495 (h) *Sectional recordings*), subject to the following conditions:

- i. That all conditions of approval of the Skylark Commons Subdivision as approved on July 22, 2008 shall be applicable and remain in full force and effect; and
- ii. That this approval for the first phase (7 lots along Skylark Road) of the *Amendment to the Subdivision Plat* expires on July 21, 2011 and this approval of the second phase (10 lots along Coolidge Avenue) expires on July 21, 2013; and

- iii. That the applicant shall add a note to the *Amendment to the Approved Subdivision Plat* that states that a Performance Guarantee and Inspection Fee in respect of Phase II must be paid prior to the issuance of a building permit for any part of Phase II improvements; and
- iv. That the applicant shall add a note to the *Amendment to the Approved Subdivision Plat* that sets out any MDEP Special Conditions of the NRPA Tier I Permit for the wetland filling; and
- v. That the applicant shall modify the agreed *QUITCLAIM DEED WITHOUT COVENANT OR RELEASE DEED* (from applicant to Portland Trails) which was submitted to comply with Condition 2.vi. of the original Subdivision Approval (and to be executed prior to the release of the signed Subdivision Plat) to clarify that a portion of the subject area is to be used as a temporary paved vehicle turning area for public vehicle access and for snow storage until Phase II is completed, at which time this area would revert to Portland Trails use only; and
- vi. That all proposals shown within the Phase I area on the approved *Sheet 7 Landscaping Plan Rev 8.23.2010*, including the Portland Trail south to the site boundary, shall be implemented as part of Phase I; and
- vii. That the originally approved *Sheet 6 Roadway Profile for Oramell Avenue Rev 8.11.08* shall be revised and submitted (prior to the issuance of a building permit) to clarify phasing and to be consistent with Sheet 3 regarding Phase 1 improvements /snow storage in and near Oramell Avenue; and
- viii. That the applicant shall ensure that the trail connection between Skylark Road and the trail in Oramell Avenue (south) is kept passable and that snow removed from the street is not deposited on top of/in front of the trail during the period before Phase II is complete; and
- ix. That the applicant shall be responsible to correct and stabilize any erosion issues associated with either the piped or surface drainage at the end of Skylark Road for a period of one year after City acceptance of the Skylark Road and Oramell Street; and
- x. The applicant shall place not less than two (2) posts on the southerly edge of the turnaround within the proposed Portland Trails easement within Oramell Street to avoid conflicts with snow storage; and
- xi. The recording plat shall be revised to reflect only lots 11-17 on Skylark Road as the approved lots in Phase I for sale and development, subject to the review and approval of the Planning Authority.

The approval is based on the submitted plans. If you need to make any modifications to the approved plans, you must submit amended plans for staff review and approval.

Please note the following provisions and requirements for all subdivision approvals:

1. A revised recording plat listing all conditions of subdivision approval must be submitted for review and signature prior to the submission of the performance guarantee.
2. The above approval does not constitute approval for building plans, which must be reviewed and approved the City of Portland's Inspection Division.
3. Where submission drawings are available in electronic form, final sets of plans shall be submitted digitally to the Planning Division, on a CD or DVD, in AutoCAD format (\*.dwg), release AutoCAD 2005 or greater. Mylar copies of the as-built drawings for the public streets and other public infrastructure in the subdivision must be submitted to the Public Services Dept. prior to the issuance of a certificate of occupancy, and final as-built plans for the subdivision shall be submitted in the digital formats prior to the reduction or release of the performance guarantee for the defect guarantee.

3.

4. A performance guarantee covering the site improvements as well as an inspection fee payment of 2.0% of the guarantee amount and seven (7) final sets of plans must be submitted to and approved by the Planning Division and Public Services Dept. prior to the release of the subdivision plat for recording at the Registry of Deeds and prior to the release of a building permit or street opening permit. If you need to make any modifications to the approved plans, you must submit a revised subdivision application for staff review and approval.
5. A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
6. Prior to construction, a pre-construction meeting shall be held at the project site with the contractor, Planning Division's Development Review Coordinator, Public Work's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.
7. If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)

The Development Review Coordinator must be notified five (5) working days prior to date required for final site inspection. The Development Review Coordinator can be reached at the Planning Division at 874-8632. Please make allowances for completion of site plan requirements determined to be incomplete or defective during the inspection. This is essential as all site plan/subdivisionsteve@dimillos.com requirements must be completed and approved by the Development Review Coordinator prior to issuance of a Certificate of Occupancy. Please schedule any property closing with these requirements in mind.

If there are any questions, please contact Jean Fraser, Planner, at 874 8728.

Sincerely,



Bill Hall, Chair  
Portland Planning Board

**Attachments:**

1. Planning Board Hearing Report #25-10
2. Performance Guarantee Packet

**Electronic Distribution:**

Penny St. Louis Littell, Director of Planning & Urban Development	Bill Clark, Public Services
Alexander Jaegerman, Planning Division Director	David Margolis-Pineo, Deputy City Engineer
Barbara Barhydt, Development Review Services Manager	Greg Vining, Public Services
Jean Fraser, Planner	John Low, Public Services
Philip DiPierro, Development Review Coordinator	Jane Ward, Public Services
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Tammy Munson, Inspections Division	Jeff Tarling, City Arborist
Gayle Guertin, Inspections Division	Tom Errico, Traffic Engineering Reviewer
Lisa Danforth, Inspections Division	Dan Goyette, Woodard & Curran
Lannie Dobson, Inspections Division	Assessor's Office
Michael Bobinsky, Public Services Director	Approval Letter File
Kathi Earley, Public Services	

**Hard Copy:** Project File



# PLANNING BOARD REPORT PORTLAND, MAINE

SKYLARK COMMONS SUBDIVISION, VICINITY OF 87 SKYLARK ROAD

Amendment to an Approved Subdivision to Create 2 Phases

Frank Didonato, APPLICANT  
BH2M Engineers, TECHNICAL ASSISTANCE

Submitted to: Portland Planning Board: Public Hearing Date: 7/27/10	Prepared by: Jean Fraser, Planner Date: 7/23/10 <b>PB Report: #25-10</b>
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## I. INTRODUCTION

On behalf of Frank Didonato, BH2M Engineers have requested Planning Board approval to phase the approved 17-lot Skylark Commons Subdivision, creating a Phase I of 7 lots and a Phase II of 10 lots. The proposal includes minor interim revisions to the approved Skylark Road proposals to provide adequate access to Phase I until Phase II is completed.

The Planning Board's authority to allow for phasing of the approved subdivision is provided in the Ordinance that allows for Sectional Recording of Subdivision Plats (14-495 (h)).

This request has been brought direct to a Hearing at the request of the applicant and because the phasing has few implications.

This Hearing has been noticed to 273 neighbors and interested citizens. A notice of this Hearing appeared in the July 19 and 20, 2010 editions of the *Portland Press Herald*. The Planning Division has not received any comments as of the time of completing this Report.

## II. PROJECT DATA

Existing Zoning:	R-3 Residential
Existing Use:	Wooded- undeveloped
Proposed Use Phase I:	Residential- 7 single family lots
Proposed Use Phase II:	Residential- 10 single family lots
Parcel Size:	4.55 acres total (Phase I: 1.76 acres)
Impervious Surface Area (Phase I):	
Existing:	28.322 sq ft
Proposed:	51.442 sq ft
Net Change:	23.120 sq ft
Total Disturbed Area:	Total: 4.14. acres (Phase 1: 1.59 acres)
Proposed Total Paved Area:	51,442 sq ft Phase I only

## III. EXISTING CONDITIONS

The site is largely deciduous wooded upland with pockets of wetland areas which are not associated with a watercourse. To the south of the site is the PATH School and the Washington Crossing Condos; Regan Lane is nearby to the north; to the west is at large area of undeveloped and largely wet land; and to the east are single family homes along the built portion of Skylark Road and Hennessey Drive (off of Washington Avenue).

Skylark Road is an existing street which dead-ends within the site and continues as a paper street to meet with Oramell Avenue. Coolidge Avenue is a graveled paper Street with a few houses along it and Oramell Avenue is a paper street but currently wooded.

#### **IV. PROPOSED DEVELOPMENT**

The applicant received Subdivision approval in 2008 (Attachment 6) for a 17 lot subdivision that includes construction of part of Skylark Road, all of Coolidge Avenue and the part of Oramell Avenue between these two streets (see the approved Subdivision Plat in Attachment 8b). The proposed phasing creates a Phase I that completes Skylark Road using its intersection with Oramell Avenue as an interim T-turnaround for the first 7 lots until Phase II and Oramell Avenue are completed (described/shown in Attachments A, E1 and E2). The previously approved proposed pressure sewer system would also be completed for these first 7 lots.

Phase II would comprise the construction of Hennessey Drive, Coolidge Avenue and Oramell Avenue as streets to city standards to allow access to a further 10 lots, plus extend the pressure sewer system into one more lot in accordance with the original approval.

#### **V. BASIS OF THE REVIEW**

The applicant requests the Planning Board permit this subdivision to be divided into two sections as allowed by Article IV Subdivision Section 14-495 (h), which reads:

- (h) *Sectional recordings: Following subdivision plat approval, the Planning Board may permit the subdivision to be divided into two (2) or more sections for recording purposes subject to any conditions that the board deems necessary in order to insure the orderly development of the plan. The applicant may seek approval of and record a sectional recording plat with the county registry of deeds only if the section constitutes at least twenty (20) percent of the total number of lots contained in the approval plat and, in addition, shows the entire tract or parcel. In these circumstances, if the first section of the plat has been recorded within three (3) years after Planning Board approval, subdivision plat approval of the remaining sections of the plat shall remain in effect for five (5) years after Planning Board approval.*

The proposed Phase I represents 41% of the total number of lots contained in the approved Plat and the proposed Phase II comprises the remainder of the originally approved Subdivision Plat site.

The Amendment to an Approved Subdivision Plat (Attachment E1) includes a note indicating that the amendment is for creation of a Phase I and a Phase II. Due to the overlap of Phase I and Phase II at the Skylark Road/Oramell Avenue intersection, rather than have a sectional recording of the phases it is suggested that a condition of the amendment be that a further Performance Guarantee would be payable when Phase II proceeds; proposed wording is included at potential condition iii. Therefore, it is anticipated that the Performance Guarantee required for release of the signed Amendment Plat would relate only to Phase I costs.

#### **VI. STAFF REVIEW**

##### **A. ZONING ASSESSMENT**

The Zoning Administrator has confirmed that the proposed amendment to create two phases does not impact any zoning issues (Attachment 4).

##### **B. SUBDIVISION STANDARDS**

The proposed phasing of the approved subdivision has been reviewed by staff in terms of whether the phasing allows for an "orderly development of the plan" (Section 14-495 (h)) and whether each phase is in conformance with the relevant review standards of the subdivision ordinance and applicable regulations. Since the original Subdivision Review covered all of the subdivision requirements, the comments below only relate to those aspects where the proposed phasing require interim or additional measures.

It should be noted that the applicant has complied with all of the conditions of the original Subdivision approval (June 22, 2008 – Attachment 6) except those involving payment of infrastructure contributions or which necessarily must be met at a future date, as confirmed in the 12.7.2009 staff letter to the applicants attorney included in Attachment 7.

1. Will Not Result in Undue Water and Air Pollution (Section 14-497 (a) 1), and Will Not Result in Undue Soil Erosion (Section 14-497 (a) 4)

Public Services Department has requested the following condition of approval (Attachment 3):

*The applicant shall be responsible to correct and stabilize any erosion issues associated with either the piped or surface drainage at the end of Skylark Road for a period of one year after City acceptance of the Skylark Road and Oramell Street intersection. (Attachment 3).*

This is included as potential condition ix. and in anticipation of the Board's approval to this condition, the applicant has added this to the Amended Subdivision Plat as Note #27.

4. Will Not Cause Unreasonable Traffic Congestion (Section 14-497 (a) 5)

#### *Access*

The phasing proposal has introduced a T-turnaround at the end of Skylark Road to allow for turning of large vehicles until the through connection to Coolidge Avenue via Oramell Avenue is completed in Phase II. The Traffic Engineering Reviewer has confirmed that the proposed phasing of the approved subdivision does not raise any traffic concerns (Attachment 1).

The Fire Department has not provided written comments but is understood to consider the interim turnaround proposed in Phase I is acceptable.

It is noted that the Phase I improvements to allow access as shown on Sheet 3 *Roadway Profile Skylark Road Phase I* (Attachment E2) overlap with and differ from the approved Sheet 6 *Roadway Profile for Oramell Avenue*. To avoid confusion, the approved Sheet 6 should be renamed Phase II or revised to be consistent with Phase I. A potential condition of approval is included at vii; this revision is not suggested to be submitted for staff approval since the proposed Phase I improvements are already shown on the new plan in Attachment E2.

#### *Recreation Trail*

The approved Subdivision Plat (and associated Landscape Plan- see Attachments 8b and 8e) indicate the provision of a 6 foot wide stone dust trail within the Oramell Avenue paper street south of Skylark Road, which is required to be constructed within one month of Skylark Road extension being open to public access (whether or not accepted by the City) as in condition 2vii of the Approval (Attachment 6). This was agreed during the original Subdivision Review to provide a key link in the Portland Trail network, and it is understood that Portland Trails has recently installed a bridge over the nearby Dole Brook to improve the connection from Skylark Road to PATHS.

The original approval also includes a condition of approval (June 22, 2008 condition 2vi) requiring an easement or release deed to benefit Portland Trails. This release deed was subsequently submitted and approved by staff in 2009. The current phasing proposal involves the construction of part of the turnaround and a snow storage area over part of the area where the trail was to be located, and staff recommends the following potential condition (included as v.) that requires the easement/release deed to be revised:

*That the applicant shall modify the agreed QUITCLAIM DEED WITHOUT COVENANT OR RELEASE DEED (from applicant to Portland Trails) which was submitted to comply with Condition 2.vi. of the original Subdivision Approval (and to be executed prior to the release of the signed Subdivision Plat) to clarify that a portion of the subject area is to be used as a temporary paved vehicle turning area for public vehicle access and for snow storage until Phase II is completed, at which time this area would revert to Portland Trails use only; and*

Portland Trails have been informally advised of the need for the proposed revision and are agreeable except for a concern regarding the location of the snow storage in relation to the trail. The Portland Trails are used regularly in the winter and generally trailheads are cleared for this use. The snow storage area in the vicinity of the trail was requested by DPS (Attachment 3) and will be used by the developers/private snow clearance vehicles until the City accepts the completed Skylark Road. Potential condition of approval viii. has been included to ensure that the trail connection between Skylark Road and the trail is kept passable and that snow is not deposited on top of/in front of the trail during the period before Phase II is complete.

5. Will Provide for Adequate Sanitary Sewer and Stormwater Disposal (Section 14-497 (a) 6), and Will Not Cause an Unreasonable Burden on Municipal Solid Waste and Sewage (Section 14-497 (a) 7)

The Public Services Department requested (7.15.2010) revisions to pipe elevations and channels and also that 30 foot cleared areas be identified for snow storage around the turnaround. The applicant has revised the plans to address these comments (Attachment D) and the revisions are satisfactory as confirmed in the 7.21.2010 update in Attachment 3.

10. Groundwater (Section 14-497 (a) 12), Wetlands (Section 14-497 (a) 14) and Streams (Section 14-497 (a) 15)

The filling of small pockets of wetland areas over the site required a Tier I Permit under NRPA from the MDEP. That Permit was approved on July 22, 2008 but expired 2 years from issue. The applicant has applied to extend the approval and these documents are included in Attachment C. The first approval included a special condition regarding demarcation of the wetland areas on individual lot deed documents, and a potential condition of approval (iv) is that this and any other MDEP special condition(s) should be listed on the amended plat.

## VII. STAFF RECOMMENDATION

Staff recommends approval to the phasing of the approved Skylark Commons Subdivision as the applicant has demonstrated that Phase I will operate satisfactorily during the period prior to completion of Phase II.

## VIII. MOTIONS FOR THE BOARD TO CONSIDER

On the basis of application, plans, reports and other information submitted by the applicant and on the basis of the findings and recommendations contained in Planning Report #25-10 as relevant to standards for subdivision, and other regulations and the testimony presented at the Planning Board hearing as follows:

The Planning Board finds that the proposed Amendment to the Approved Subdivision Plat, which amends the approved subdivision by dividing it into two phases (of 7 lots and 10 lots respectively) (phase one as referenced on plans Sheet 1 *Amendment to the Approved Subdivision Plat dated July 22, 2008* and Sheet 3 *Roadway Profile Skylark Road Phase I Rev 7.20.2010*, and phase two as referenced on the plan Sheet 1 *Amendment to the Approved Subdivision Plat dated July 22, 2008*) **is / is not** in conformance with the subdivision standards of the City's Land Use Ordinance (including Section 14-495 (h) *Sectional recordings*), subject to the following conditions:

Potential conditions:

- i. That all conditions of approval of the Skylark Commons Subdivision as approved on July 22, 2008 shall be applicable and remain in full force and effect; and
- ii. That this approval for the first phase (7 lots along Skylark Road) of the *Amendment to the Subdivision Plat* expires on July 21, 2011 and this approval of the second phase (10 lots along Coolidge Avenue) expires on July 21, 2013; and
- iii. That the applicant shall add a note to the *Amendment to the Approved Subdivision Plat* that states that a Performance Guarantee and Inspection Fee in respect of Phase II must be paid prior to the issuance of a building permit for any part of Phase II improvements; and

- iv. That the applicant shall add a note to the *Amendment to the Approved Subdivision Plat* that sets out any MDEP Special Conditions of the NRPA Tier I Permit for the wetland filling; and
- v. That the applicant shall modify the agreed *QUITCLAIM DEED WITHOUT COVENANT OR RELEASE DEED* (from applicant to Portland Trails) which was submitted to comply with Condition 2.vi. of the original Subdivision Approval (and to be executed prior to the release of the signed Subdivision Plat) to clarify that a portion of the subject area is to be used as a temporary paved vehicle turning area for public vehicle access and for snow storage until Phase II is completed, at which time this area would revert to Portland Trails use only; and
- vi. That all proposals shown within the Phase I area on the approved *Sheet 7 Landscaping Plan Rev 8.23.2010*, including the Portland Trail south to the site boundary, shall be implemented as part of Phase I; and
- vii. That the originally approved *Sheet 6 Roadway Profile for Oramell Avenue Rev 8.11.08* be revised and submitted (prior to the issuance of a building permit) to clarify phasing and to be consistent with Sheet 3 regarding Phase 1 improvements /snow storage in and near Oramell Avenue; and
- viii. That the applicant shall ensure that the trail connection between Skylark Road and the trail in Oramell Avenue (south) is kept passable and that snow removed from the street is not deposited on top of/in front of the trail during the period before Phase II is complete; and
- ix. That the applicant shall be responsible to correct and stabilize any erosion issues associated with either the piped or surface drainage at the end of Skylark Road for a period of one year after City acceptance of the Skylark Road and Oramell Street.

## **ATTACHMENTS**

### **REPORT ATTACHMENTS**

#### **Reviewer Comments**

1. Traffic Engineering Review comments 7.16.2010
2. Associate Corporation Counsel comments 7.21.2010
3. Department of Public Services comments dated 7.15.2010 as updated 7.21.2010
4. Zoning Administrator comments 7.21.2010
5. Fire Department comments (to follow)

#### **Previous approval documentation**

6. Approval letter confirming July 22, 2008 approval to 17 lot subdivision, dated 8.12.2008
7. Letter confirming compliance with conditions to be met prior to recording of Plat, dated 12.7.2009
8. Subdivision plans as approved July 22, 2008, as relevant to Plat/ phasing
  - a. Sheet 2 Existing Conditions
  - b. Approved Subdivision Plat (as signed by Planning Board)
  - c. Approved Sheet 3 Roadway Profile Skylark Road
  - d. Approved Sheet 6 Roadway Profile Oramell Ave.
  - e. Approved Sheet 7 Landscaping Plan

### **APPLICANT'S SUBMITTAL**

- A. BH2M Cover letter and Application 6.30.2010
- B. Right Title and Interest documentation
- C. MDEP application to extend previous Permit re Tier 1 filling of wetlands
- D. BH2M Letter confirming final revisions 7.20.2010
- E. Plans revised for Phasing
  1. Sheet 1 Amendment to an Approved Subdivision Plat dated July 22, 2008
  2. Sheet 3 Roadway Profile Skylark Road Phase 1