

11/06/06

Town of Damariscotta
Planning Board Meeting
November 06, 2006
Minutes

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5. Ron & Mildred Edwards - shoreland application - 16 Firtree Lane - addition to cottage on Biscay Pond.

ROLL CALL:

Chairman of the Board, George Parker called the meeting to order at 7:30 p.m. There was a quorum present throughout. Members present were Paul Stevens, Wilder Hunt, Jonathan Eaton, George Parker, and Fred Sewall.

The audience included:

- David Levesque, 242 Main Street, Damariscotta - Applicant - Change in Use - Residence to law office & residential rental.

- Scott Hilton, 8 Ellinwood Drive, Damariscotta – Abutter – Ferraiolo Concrete.
- Carolee Hilton, 8 Ellinwood Drive, Damariscotta – Abutter – Ferraiolo Concrete.
- John Ferraiolo, Owls Head – Ferraiolo Concrete.
- William Fraser, 74 Biscay Road, Damariscotta – Ferraiolo Concrete.
- Barbara Fraser, 74 Biscay Road, Damariscotta – Ferraiolo Concrete.
- Wayne Brewer, Boothbay Harbor, Representative – Ferraiolo Concrete.
- Stanley Brown, 57 Biscay Road, Damariscotta – Applicant – Change in use at 57 Biscay Road – bottle redemption.
- Ron Edwards, 11988 Bluegrass Ct., Nokesville, VA 20181 – Applicant – Shoreland Zoning – addition to cottage at 16 Firtree Lane on Biscay Pond.
- Mark Prior, 152 Walpole Meeting House Road, Bristol – contractor – Edwards project.
- Walter Hilton, 20 Water Street, Damariscotta
- Kim Fletcher – Lincoln County News

1. Minutes

The Board was presented with and reviewed a draft copy of the minutes for the October 02, 2006 meeting. Fred Sewall made a motion to approve the minutes as submitted. Jonathan Eaton seconded the motion. The Board voted 4-0 to approve the October 02, 2006 minutes.

2. Ferraiolo Concrete – 74 Biscay Road – Discussion – hours of operation.

George Parker told the room that he would like to take up the Ferraiolo discussion first on the agenda because it was actually a carry over from the previous month. There were no objections to his request. Parker reviewed the issue – primarily surrounding complaints of noise and early morning start up times. He stated that he has had a difficult time finding records stating exactly what the agreement was in 2001. He noted a change in ownership since the original meeting in 2001 and felt it would be best to have a hearing to allow all sides to have representation. The Planning Board would then make a decision that is agreeable to all involved about the appropriate hours of operation. Once the decision is in writing, any future violation of that decision would be subject to enforcement.

He then read aloud from the ordinance, acknowledging that it was currently a weak standard that was being looked at by a committee for future changes. He then asked the other Board members if they had any recollection on what was discussed back in 2001 and what their interpretations were of the ordinance wording. Wilder Hunt asked if it was known what was originally stated. Parker stated it was not known. Hunt stated that he felt 6 am was reasonable. Jonathan Eaton recalled being at the meeting in question and seemed to have some recollection of a 6 am start time. He went on to say that he did not think that was an unreasonable time. Parker stated that he recalled 6 am as well, with the option of occasional 5:30 with adequate notice to abutters. Fred Sewall felt it was unfair to change the rules after the fact. He stated that he could not recall anything specific, however he feels 6 am is reasonable. He stated that everyone involved has to work together. Sewall stated that he has visited the site and noticed that Ferraiolo is making some changes in their operation to try and make things better for the neighbors. He also stated that in all fairness, he thinks the changes they are making need to be given a chance to see if any improvement is made to the situation. Paul Stevens stated that he was not at the

meeting in question, but feels that 6 am is reasonable for that type of business.

Parker then turned the floor over the Ferraiolo Concrete representatives. Wayne Brewer, Manager at Ferraiolo Concrete spoke from the audience. He stated that they don't usually start before 6 am unless there is a big commercial job or in an emergency. He also stated that they try to remember to notify the neighbors when they have to start before 6 – if they know ahead of time. He stated that most commercial contractors want their cement by 5:30 – 6:00. He said if they can't start until 6 am then they cannot get the cement out until 6:45 – 7 am and that would cause them to lose business. He told the Board that they are just trying to run a business and stay competitive. Parker asked if they could bring the concrete from the Rockland plant on the jobs that need it earlier than 6am. Mr. Brewer indicated that they could but it would cost them much more. He reiterated that it was very seldom that they start before 5:30 –6 am.

Scott Hilton did not agree with Mr. Brewer's statements. He stated that it has been as early as 3 am in the past, without any warning. He told the Board that he was not trying to close down the business. He said there was more that he could complain about and doesn't; issues with dust and noise & odors from the diesel trucks that lingers in the winter. He stated that for the most part the hours mentioned thus far in the meeting are reasonable to him and his family. Paul Stevens asked what the proximity was between the Hilton's house and the plant. Mr. Hilton stated that his home is approximately 50 feet from the property line and the batch plant is also approximately 50 feet from the property line. William Fraser, prior owner, stated it was more like 100 feet. Mr. Hilton did not agree. Mr. Hilton also spoke about the noise of tailgate slamming. He told the Board that this is not a new complaint, he has spoken to them about it and he felt they did make a good effort to

curtail it initially. He went on to say that he felt there was a lot of turn over in the personnel and that made communications difficult. Mr. Hilton also told the Board that in the last few months since his complaint, it seems that the noise has actually increased, perhaps in retaliation, perhaps not. Mr. Hilton then voiced concerns about enforcement once the Board made a decision because Mr. Fraser has told them in the past that it won't happen again, and it still goes on. Mr. Fraser stated that the batch plant was originally planned for the front of the property, closer to Biscay Road and they felt it was better to move it back from the road. He went on to say that the plant was in operation prior to Mr. Hilton's purchase of his home, that Mr. Hilton purchased his home in the middle of a commercial zone. He went on to name the abutting businesses. They argued back and forth about past history of the plant and it's permits. George Parker told the room that they needed to stick to the hours of operation issue.

Mr. Brewer again stated that it was not good business practice to not use the most cost effective means to deliver the goods. John Ferraiolo asked the Board how many complaints there have actually been since he purchased the plant last year. Parker told him it did not matter to him if it was one or 10. He told Mr. Ferraiolo that this is the only industry in the town with these types of issues. Mr. Ferraiolo told the Board that he has been trying to follow the rules told to him when he purchased the plant. He recalls that there was one time that the Hilton's were not called and he spoke with his employees about it. He told the Board that they do not typically start before 5:30 – 6am because he does not want to pay the overtime. He then told the Hilton's that it can happen, and he would call them and if they don't call he encouraged the Hilton's to call him personally because he'll make certain it happens. Mr. Ferraiolo then told the Board that on one occasion when they did call ahead, Mr. Hilton still called to complain. He asked the Board what he was

supposed to do in that instance, he felt the rules needed to be followed both ways.

Parker told the room that the Town is aiming for a specific on hours of operation in the updates to the ordinances. He went on to tell them that members of the committee were looking at either 6 am or 7 am depending on location in town and it would apply to all businesses in town. He went on to say the change will need to be voted on and they are looking at possibly sometime in June for a vote. Parker stated that Damariscotta is basically a residential / commercial town, not an industrial town and no matter what they think their business is, there is no question that it is industrial in nature. Parker then told the Board that they need to either ratify what they all feel was decided previously or make some adjustments for special cases. He voiced concern that if special cases were allowed they might end up right back where they are now.

Fred Sewall asked how often they start up before 6 am over the past year. Mr. Hilton stated it was half of the time, conservatively. Mr. Brewer stated that he could bring in time cards to show how many times over the last 3 months. Wilder Hunt stated that the Board must move forward to the future, the past issues are water under the bridge. He stated that he agrees there needs to be a specific time, but also feels there will always be exceptions, so there needs to be a method for allowing that. Parker added and how often an exception would be allowed. Mr. Hilton told the Board that he has concerns that exceptions would become common place. Parker asked Mr. Hilton what he thought about a 5:30 start time. Mr. Hilton stated that he could handle 5:30, but he is concerned that it would creep forward to 5am, then 4:30, etc. Carolee Hilton stated that they are not trying to cause problems, they are usually up at 5am or so, but her children don't need to be up at that hour. She told the Board that they are just asking for consideration.

Mr. Brewer told the Board that he is moving forward with the construction of a sound barrier that he hopes will be done in the next 2 weeks. He stated that once completed he hopes that the Hilton's will not be able to hear any trucks. He stated that at least they are trying to make it better. Mr. Hilton stated that was great, but no one mentioned anything about that to him. He asked why couldn't it have been resolved prior to now. Mr. Hilton stated that they could come over to his yard to test the sound level once the barrier was complete. He also proposed that there might be less of an impact on his family if they batched the trucks at an idle. Mr. Brewer reiterated that he would much rather start later, he only starts early when he's forced to.

Fred Sewall stated that he did not really want to put restrictions on business – he understands that it is demanding in the construction trade and they have to make a living. He felt it was much more important to try to create sound barriers and take measures to reduce the effect of the noise given that there was only one person complaining. Mr. Hilton stated that he was the only resident in the area. Sewall stated that there were others across the street and they were not present at this meeting. Mr. Hilton stated that he felt there should be a fixed time. Sewall stated that he was not certain it was in the Planning Board's power to set a time. He went on to say that it was not written into any ordinance currently and therefore he did not know how legal any decision tonight of a specific time would be. He also stated that he did not know if they should change the rules after the fact. He told the Hilton's and Mr. Ferraiolo that the agreement should come between them. Mr. Hilton asked how anything would be enforced if an agreement between them was violated. Sewall stated that the Selectmen should be the enforcement. Mr. Hilton stated that this decision would technically be an amendment to a site review and that was within the Planning Board's power.

Parker read from the ordinance again and clarified that it was not saying that there couldn't be any noise, it states that noise must be suppressed if before reasonable hours. Parker indicated that he did not think that the Town really wanted to get into measuring decibels. Mr. Hilton stated that maybe it could be resolved with a written agreement between neighbors with acceptable exceptions on both sides. Parker then suggested that the Board perform a site visit to see exactly what is being done and gage the noise at start up. The Board agreed this would be helpful in making a decision. Parker suggested that the Board table the decision until the next meeting. Sewall stated it should be tabled until the measures being taken by Ferraiolo are complete so they can see how they will help. The Board decided to reconvene at the December meeting to discuss the matter further.

3. David Levesque – change in use application – 242 Main Street – residence to law office & residential rental unit .

David Levesque told the Board that he has purchased the Chapman House located at 242 Main Street and would like to use the first floor space as a law office and the upper 2 floors as a single rental unit. He told the Board that the only changes that he is proposing to the exterior of the building is the addition of exterior stairs with a small deck on the rear of the building to provide access to the apartment. Mr. Levesque showed a drawing of the proposed project.

George Parker asked how many parking spaces there were. Mr. Levesque told him there was approximately 20 feet at the rear of the building plus a space in the garage for the tenant. Parker asked how many employees there would be. Mr. Levesque told him he had none at this point, but potentially there could be 2-3 maximum, including himself. He noted that there is room for some expansion of the parking area if

needed. Parker noted that he has received a letter from the Sanitary District noting that the impact fees have been paid. Parker asked if there was a letter from the Fire Department. Mr. Levesque stated that he had not spoken to the Fire Chief yet. Parker asked about notification to abutters. Mr. Levesque showed proof and submitted copies to the Board. Parker then asked what the timeline was. Mr. Levesque stated that he had a contractor waiting for the go ahead from him, so the sooner the better. Fred Sewall asked if the project required Fire Marshall approval. Parker indicated that it did not qualify for a permit from the Fire Marshall. Sewall asked about the number of actual parking spaces. Mr. Levesque stated that by the 9 x 20 standard they can fit 3 plus 1 in the garage.

Fred Sewall made a motion to approve the application for Change in Use as submitted. Wilder Hunt seconded the motion. The Board voted 4-0 in favor of approving the application as submitted.

4. **Stanley Brown – change in use application – 57 Biscay Road – bottle redemption.**

Stanley Brown told the Board that he has opened a bottle redemption business at 57 Biscay Road, in the location of the old Bob's Mailbox Express. The Board expressed concerns for the large quantity of bottles "hanging" around. Mr. Brown indicated that he takes all of the bottles to his home location in Bristol every night. George Parker stated that he wanted to make sure that there wouldn't be anything outside. Mr. Brown stated that he intends to build a bin of some kind for people to leave bottles in if they come before they open, he told the Board it would be sealed. The Board asked about the use of the existing garage area. Mr. Brown stated that it was currently housing carpet. Fred Sewall asked about parking. Parker indicated that there is plenty. Mr. Brown asked about signage. The Board stated there wasn't any sign ordinance, but

the Board likes to be able to review any plans for signs. Mr. Brown reviewed his plans for a simple sign in the existing planter box near the road. The Board acknowledged that there was previously a sign in that location and they went over some of the restrictions they have.

Jonathan Eaton made a motion to approve the application for Change in Use as submitted. Paul Stevens seconded the motion. The Board voted 4-0 in favor of approving the application as submitted.

5. Ron & Mildred Edwards – shoreland application – 16 Firtree Lane – addition to cottage on Biscay Pond.

Mark Prior and Mr. Edwards came before the Board with plans to build a 16' addition to the rear of the Edwards' cottage on Biscay Pond. Mr. Edwards explained the site plan to the Board. Parker stated that because the project is in shoreland zoning the Board must verify the percentages on the increase so that they do not go over the allowed 30%. Parker asked if a new septic system was going in. Mr. Edwards stated that the septic was in, it was the original design. Fred Sewall stated as long as the calculations were correct, he was ok with it. George Parker stated that his calculations agree with the applicant's. Fred Sewall then made a motion to approve the application as submitted. Paul Stevens seconded the motion. The Board voted 4-0 in favor of the application as submitted.

Other Discussion

- **Larry Sidelinger – Yankee Pride – Midcoast Road** – George Parker told the Board that Jim Phillips is building a storage building for use by Yankee Pride after the wind took the canvas hut Mr. Sidelinger

was previously using. Parker told the Board that Neil Campbell, Codes Enforcement Officer had given permission for the building to be built. Parker told the Board that it was to be used as a storage building, there would be no plumbing. Parker stated that the issue is whether it needs to come before the Planning Board for site review. Fred Sewall stated that it should because it was commercial use and there may be issue with the large trucks and the previous building was considered temporary. The Board then noted that it was not a new operation in that location. Sewall stated that according to the ordinance, Neil Campbell couldn't just approve something like that as a commercial operation. Fred Sewall asked what the size of the building was going to be. Parker told him approximately 30' x 40'.

- **Mic Cappelletti use of property** – George Parker told the Board that a realtor had approached the Town with questions regarding the sale of Cappelletti's property. They wanted to know if the property could be divided so that the shop area can be used commercially in that residential zone. Parker stated that it would be a limited use allowed by ordinance in a residential zone. He stated that if it's kept as one piece of property with the residence, the use might fall under the home occupation allowance, but that would be the only way. The Board agreed.

Adjournment: The meeting was adjourned at 9:00 PM

Fred Sewall made a motion to adjourn. Wilder Hunt seconded the motion. The Board voted 4-0 in favor of adjournment.

George Parker, Chairman

Jonathan Eaton

Wilder Hunt

Respectfully Submitted by:

Pande Paul Stevens

Rebecca J. Bartolotta

Fred Sewall

DAMARISCOTTA PLANNING BOARD