

Town of Damariscotta  
Planning Board Meeting  
August 3, 2015  
Minutes

**ROLL CALL**

Members present: Jonathan Eaton, Chairman, Wilder Hunt, Vice Chairman, Shari Sage, Stephen Cole and Bruce Garren. Also present were Tony Dater, Planner, CEO Stanley Waltz, and Cindy Sykes, Secretary.

Audience: Kimberly Sampson, Adam Maltese, George Dolengowski, Robin Mayer, John Page and Darryl Day.

**MINUTES**

The Board reviewed minutes from July 6, 2015. **On Motion Cole/Garren to approve as written. Vote 4-0-1.**

**A. NEW BUSINESS**

1. George Dolengowski – New Future Land Use Plan shows his property at 19 Water St is no longer in the C-1 Zone. Previously in the downtown historic district, which includes most of the C-1 District. Requests that the zoning for his property be consistent with neighboring properties.

-Dater – May have been mistake by Rory Craib when mapping. Can be changed at a Special Town Meeting.

Eaton – Suggested to table decision until Dater discusses with Rory Craib and/or Mark Eyerman.

2. Sampson/Maltese – Home occupation/daycare at 44 Abbie Lane  
Board reviewed letter from Law Offices of Cohen and Cohen, representing neighbors to the project. Neighbors object to the project and are asking for a denial of the application by the Planning Board. Reasons stated: Does not qualify as a home occupation; schools not allowed in Rural Zone; increase in vehicular traffic will overburden the private road; deed restricts the right of way on Abbie Lane for personal use only. (see attached letter for reference)

- Maltese – daycare will be located in accessory building adjacent to home. Will be licensed as a family child care center for 8 children ages 3-6. Open 5 days a week, 8:30AM to 2PM. Not licensed as a school. Family childcare center only. Site Plan Ordinance, Article 6, allows environmental study and education as a conditional use.
- Cole – Road restrictions on a private road are a civil legal issue, not Planning Board.
- Dater – Need to make clear if a daycare or a school. Daycare allowed as home occupation.
- Sampson – discussed DHHS regulations for daycare vs school
- Cole – project appears to meet home occupation guidelines. Project has two entrances, one is allowed per site plan ordinance, and perhaps would lessen concerns about the road
- Page – Abbie Ln is a narrow road; narrower in winter, not two way traffic in all areas. First turnout to allow cars to pass is 400 feet from Egypt Rd.
- Garren – 1/10 mi to first entrance, 2/10 to second entrance.
- Page – Road association has been improving road for 9 years. Difficult to travel and navigate. Daycare will increase use of road. Unconventional non-pressurized wastewater disposal must meet Maine Subsurface Wastewater rules. Entrance directly across from his home.
- Maltese – Composting toilet for black water; described 2 bucket system for handwashing.
- Sage – Is it sanitary for all children to use same water?
- Sampson – Has experience at an environmental school; no chemicals used; all natural
- Day – must plan for maximum capacity of 8, with double vehicle trips per day; currently van and car can't pass
- Maltese – estimates current road use at 66 trips per day by all users
- Sage – emergency vehicle access is a concern, and the environment
- Garren – Stand alone building, separate from home
- Dater - If it looks and feels like a school, it does not meet the criteria for a home occupation, must look residential.
- Sampson – no playground
- Cole – definition of home occupation allows activity on or in property.

- Page – Abbie Lane is not the place for extra traffic caused by a daycare; DEP may have issues due to location of Little Brook. 12 to 15 properties have ROW's on first 400 feet of Abbie Ln.
- Dater – Planning Board has authority under Site Plan Ordinance to require road improvements as a condition of approval.
- Maltese – Michelle Miller allowed Right of Way for Abbie Ln across her property as lands were subdivided. Deed does not state the width of the ROW.
- Garren – Traffic is main concern, use of a van to carpool would lessen traffic.
- Maltese – would require car seats, trying to keep daycare, homelike, not institutional
- Hunt – suggested professional assessment of road
- Dater – could create turnout to increase safety for two vehicles to pass
- Cole – Fire Dept needs to approve for Daycare
- Sampson – Would Planning Board approval be required if in the home?
- Eaton – yes; Planning Board needs more info regarding legal access and ROW's . Will need input from Fire Dept. There are minimum road widths for safety under regional standards.
- Sage – requested more info on gray water
- Maltese – may seek separate ROW from Miller for access directly to property.
- Eaton – still viewed as home occupation. No problem with the project, road is the issue. Board members should visit site after Maltese provides answers on ROW from Miller. Tabled until next meeting.

## C. OTHER

1. Eaton – MMA has advised that typos in the Flood Plain Ordinance can be corrected at a Special Town Meeting. **On Motion Sage/Garren to send corrected Ordinance to Selectmen to set a Special Town Meeting vote. Vote 4-0-1.**

## B. OLD BUSINESS

### 1. Sign Ordinance

- Eaton – Federal Highway ADA regulates sidewalks.
- Hunt – 28 inches between two sandwich boards near Schooner Landing

- Mayer – Suggested using green posts for wayfinding signs with arrows in the downtown area. Perhaps businesses could rent space.
- Dater – can limit to 1 sandwich board per business; allowed to limit size, location, texture, color, but not content.
- Waltz – Camden sign ordinance allows larger signs on the highway than downtown.
- Dater – Will change Camden sign ordinance to Damariscotta and Board can review.
- Waltz – Town needs sign permit to regulate number, size, percent coverage of building, location and a fee.
- Garren – need to address hanging signs
- Dater – need stand alone sign ordinance

Dater – asked for update on Maine-Ly Pawn

- Waltz has conference call with attorney on 8/4/15 regarding Maine-Ly Pawn. Hoffman might sue town for discrimination. Has sent photos to attorney of other businesses with product outside for sale. Failure to comply after notice of violation can be a fine of \$100. per day.

## ADJOURNMENT

**On Motion Hunt/Garren to adjourn at 8:55PM. Vote 4-0-1. Meeting adjourned.**

Respectfully submitted by:   
Cynthia Sykes, Deputy Clerk

We, the undersigned to dhereby approve as written, or with changes as noted, the Minutes of the August 3, 2015 Planning Board Meeting.

  
Jonathan Eaton, Chairman

  
Wilder Hunt, Vice-Chair

  
Stephen Cole

  
Shari Sage

  
Bruce Garren

Dated

  
9/14/15

LAW OFFICES OF COHEN & COHEN, P.C.

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August 1, 2015

Town of Damariscotta Planning Board  
21 School Street  
Damariscotta, ME 04543

**RE: Opposition to Proposal to Establish Little House School, Abbie Lane**

Dear Members of the Damariscotta Planning Board:

I represent multiple residents of Abbie Lane who are concerned by the application of their neighbors, Adam Maltese and Kimberly Sampson, to operate a primary school on their property. Like many Damariscotta residents, the residents of Abbie Lane chose to live there because of the location's special rural character. They currently enjoy a wooded, secluded residential neighborhood with unadulterated land separating the homes and small hobby farms along the way. Abbie Lane dead-ends at Pemaquid Pond. This narrow road is made of gravel. It is not a throughway. Even with its limited residential traffic, the road suffers from severe potholing, icing, and mudding each year that requires extensive maintenance. The operation of a school fundamentally will change the area to the detriment of neighboring residents. My clients formally object to locating a school of any kind along Abbie Lane for the reasons outlined below. Upon your review of their concerns, I have no doubt that you too will conclude that any approval, application, variance, or permit requested for this endeavor must be denied.

The Damariscotta Land Use Ordinance prohibits the creation of primary schools in the Rural District. Abbie Lane is zoned as a Rural District. The Ordinance distinguishes public buildings, like schools, from other uses. Schools are public buildings that conditionally may be allowed in the Downtown Commercial District (C-1) only. Schools are not allowed in the General Residential District or the Rural District. Like schools, Service Establishments are reserved for the Commercial Districts only and subject to the Site Plan Review Ordinance. "Service Establishments" are defined as profit and non-profit business whose function it is to provide service to the public. Little House School may meet the definition of a Service Establishment, but they may not be located in the Rural District. Simply stated, neither the Town's Ordinances nor residents of Damariscotta intend for schools to be located in an area zoned Rural, like Abbie Lane.

The proposed operation of a school on Abbie Lane further does not qualify as a "Home Occupation." The Ordinance defines such use as, "An occupation or profession which is customarily conducted on or in a residential structure or property and which is 1) clearly incidental to and comparable with the residential use of the property and surrounding residential uses; and 2) which employs no more than 2 persons other than family members residing in the home." A school for non-family members that requires a parking lot, additional driveway with turnaround, and additional heated building for classroom space is not incidental to or comparable with the residential use of the property. Picking up and dropping off children twice a day, five days a week, during the school year so that they can be outdoors is not a residential use. It is a business that charges tuition, increases traffic, and clearly is a school. It does not comport with the neighborhood or other surrounding uses. Despite the applicants' best efforts to shoehorn the proposal into the definition of a Home Occupation, it simply does not fit.

CRIMINAL LAW - REAL ESTATE - DIVORCE & FAMILY MATTERS - ESTATE PLANNING  
PERSONAL INJURY, MEDICAL MALPRACTICE - CORPORATE LAW - CONTRACTS  
ADOPTION, GUARDIAN & CONSERVATOR MATTERS

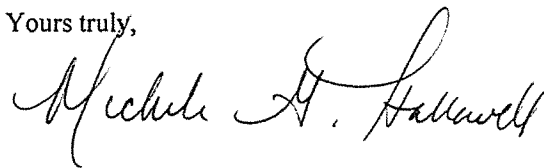
Furthermore, even if the Planning Board were to recognize the proposal as a Home Occupation, the operation could not comply with the other requirements applicable to such use. The Ordinance requires that Home Occupations be carried wholly within the principal building or accessory structure. The teaching methods of the Little House School require most of the schooling to occur outdoors. Exterior indications of the use and changes of residential character are prohibited. The property, not its buildings, will be used as a playground and outdoor classroom. Mr. Maltese and Ms. Sampson intend to create a second driveway to the property, complete with a parking lot. Vehicle traffic along Abbie Lane is expected by the applicants themselves to increase. All of these create visual impacts, offensive noise, odor, dust, and evidence of a non-residential use. Approving the Little House School, even conditionally, ensures violations of the Ordinance.

Apart from the Town's legal mandates, Mr. Maltese and Ms. Sampson do not have the appropriate legal rights to Abbie Lane to operate a school on their property. They own a parcel of real estate in their names alone. See *Personal Representative's Deed of Sale*, Lincoln County Registry of Deeds, Book 4386, Page 25, recorded March 28, 2011. Mr. Maltese and Ms. Sampson enjoy a private right of way in common with others along Abbie Lane. As the Board knows, this allows them and them only the right "to pass over the land of another person." 33 M.R.S. § 148. Their current proposal to allow third parties to increase traffic on Abbie Lane overburdens the right of way, is outside the grant of the rights in their deed, and unambiguously infringes the rights of others entitled to use the right of way along Abbie Lane.

Important to note is that the entity "Little House School" does not have any rights to Abbie Lane. Mr. Maltese and Ms. Sampson's deed restricts their rights to them personally. The grant does not extend to any third parties. In fact, the grant in the deed is so restrictive that it could be reach to prevent anyone other than them to use Abbie Lane. It does not extend rights to Mr. Maltese and Ms. Sampson's guests, heirs, invitees, or the like. It certainly cannot be read to grant any rights at all to "Little House School," or any entity created by Mr. Maltese and Ms. Sampson, let alone their respective invitees. The limitations of their rights would remain even if they conveyed their rights by deed to a third party. Any attempt to increase traffic to their property in this manner violates the rights of the servient estate owners and dominant estate owners who share the right of way with the applicants.

For the foregoing reasons, residents of Abbie Lane respectfully request that the Board deny any application and withhold any necessary permits or approvals of Little House School.

Yours truly,



Michele G. Hallowell, Esq. Bar # 4530

MGH/mgh

CC: Mr. & Mrs. Ronald Storer, Jr.  
Mr. & Mrs. Matthew Page  
Mr. & Mrs. Darryl Day  
Mr. Shane Creamer  
Ms. Kelly Holbrook