

MINUTES  
PLANNING BOARD  
TOWN OF DAMARISCOTTA  
JANUARY 8, 2018  
6:00 PM

**MEMBERS PRESENT:** Jonathan Eaton, Shari Sage, Neil Genthner, Adam Maltese, and Wilder Hunt. Alternate members Dana Orenstein and Jenny Begin were also present.

**STAFF PRESENT:** Anthony Dater, Town Planner; Stanley Waltz, Code Enforcement Officer.

**PUBLIC PRESENT:** Chris Roberts, resident; Bill Crocker, resident; Bruce Bachelder, resident; Lucy Harrington, resident; Andrea Keushguerian, resident; Amy Lalime, resident, Stepping Stone Housing, Inc.(SSHI) neighbor; Cindy Sherman, resident, SSHI neighbor; Paul Sherman, resident, SSHI neighbor; Ronn Orenstein, resident, Selectman; Nancy Bailey, resident; Ann Pinkham, resident; Susan McAlister, SSHI neighbor; Robin Mayer, resident, Selectman; Marilee Harris, SSHI Executive Director; Jason Warlick, Police Chief; Jessica Sirois, SSHI neighbor; Sandi Day, resident; Scott Abbotoni, resident; LeeAnna Libby, interested party; Tom Quaranto, interested party; Haas Tobey, resident; Matt, LCN.

*\*Prior to the start of the meeting, Attorney Peter Drum disseminated a letter to the Planning Board members. (copy attached(A))*

**CALL TO ORDER:** The Chairman called the meeting to order at 6:04 pm.

The Chairman requested that the Pledge of Allegiance be recited.

**REGULAR MONTHLY MEETING FOR JANUARY 2018:**

**A. MINUTES:**

**September 18, 2017:**

On motion Genthner / Maltese to approve the minutes of the September 18, 2017 Planning Board meeting as written.

**VOTE: 4-0 IN FAVOR  
(SAGE DID NOT VOTE)**

**October 2, 2017:**

On motion Genthner / Maltese to approve the minutes of the October 2, 2017 Planning Board meeting as written.

**VOTE: 4-0 IN FAVOR  
(SAGE DID NOT VOTE)**

**B. OLD BUSINESS:**

1. **STEPPING STONE HOUSING, INC. (SSHI): PLEASANT AND HODGDON STREETS – MAP 7 LOT 041-001-RESIDENTIAL DISTRICT-REMANDED NOTICE OF DECISION FROM THE BOARD OF APPEALS FOR SUPPLEMENTAL FINDINGS OF FACTS AND CONCLUSIONS OF LAW ON LEGALLY NONCONFORMING DWELLINGS AS OF MARCH 23, 1998. DISCUSSION WITH CONSULTANT ATTORNEY-DRAFT OF SUPPLEMENT NOTICE OF DECISION.**

Attorney Jim Katsiaficas was present to go over the draft of supplemental findings of fact and conclusions of law. (signed copy attached(B))

Katsiaficas went over the procedure:

This Board made a decision.

The decision was appealed.

The appeal went before the Board of Appeals.

The Board of Appeals questioned the factual basis on the number of units and sent it back to the Planning Board for a finding.

This Board's job is to take a look at the facts in record and determine which items were specifically used to make their determination and note them.

Katsiaficas stated that he understands there to be 2 Board members (Maltese & Genthner) who were not on the Board at the time of the original decision. He asked if they've been able to review the record and bring themselves up to date on the information so that they may act on this matter. Both members indicated that they had.

Katsiaficas asked if there was any objection to Genthner & Maltese acting on this matter tonight. There were no objections heard, from the Board or the public.

Katsiaficas read the supplemental finding of facts item by item.

Sage asked about item 5.c – records provided by the Town Assessor. She thought there was a question about those records being provided after the fact.

Eaton agreed – he stated that they did not go to the assessor before hand because the Board was convinced by the survey, the CEO opinion, and the GSBSD letter on sewer users that the 6 units in question did exist. He went on to say that the Board requested that the Planner ask the assessor for this information prior to their December meeting.

Genthner stated that it also mentions the assessor's records in the minutes of the April 24, 2017 Board of Appeals meeting.

Begin stated that she did not see where the tax records indicated that the Andrews house was 2 dwellings. Everything she saw referred to it as 1 dwelling.

Eaton stated that it didn't matter because that would have given them 7 dwellings – it's a moot point.

Katsiaficas suggested adding wording to the effect of records produced before the 12/04/17 Planning Board meeting and discussed at the April Board of Appeals hearing.

The Board agreed that made sense.

Katsiaficas suggested adding the same wording from 5.c (above) to item 7 as it references the same situation.

Sage asked if the unit that was found to be on or just over the property line would nullify any of the decisions made.

Katsiaficas told her that a court beyond the jurisdiction of the Planning Board would handle those types of issues.

Maltese asked is a residence that had been gutted and possibly used as a shed, and ultimately raised would constitute abandonment.

Katsiaficas told him that he was not sure about that particular unit but there were 7 units originally spoken of and the record justifies 6 of those to be grandfathered, so even so there would still be 6 on site. He went on to say that a person can clear out a building and still intend to keep & use as a residence. Katsiaficas told the Board he didn't really think it was relevant.

Marilee Harris, Executive Director for SSHI told the Board that Attorney Rob Gregory maintains legal records that indicate that steps were being taken to rebuild that structure but SSHI deemed it too expensive to continue in that direction so they brought in the tiny house to replace that one residence.

CEO confirmed that the tiny house replaced something that was there.

LeeAnna Libby of GSBSD confirmed that the tiny house was put in right after they tore down the other – she inspected the sewer connections for it.

Eaton stated that that doesn't show abandonment.

Katsiaficas stated the question is does it show an intent to abandon.

Eaton stated that it did not, in his opinion.

Jessica Sirois spoke from the audience and told the Board that a number of the units on that property were unoccupied for a very long time.

Eaton told her that it was her burden to prove abandonment.

Sirois told him that was not what they were told by both the Planning Board and the Appeals Board. They were told that the burden of proof was on SSHI, not them.

She went on to say that they have that proof but have not been given a forum to present that proof at this point, and asked if they could be given one.

Eaton told her that it would not be at this meeting. The Board was only reviewing the supplemental finding of facts on a decision that was already made.

Sirois told the Board that they have been bumped from one Board to another with inaccurate information. She went on to say that the level of abandonment has to do with whether or not these units should have been grandfathered at all. She again asked when they would be given the opportunity to provide their proof.

Eaton told her that they should get their forum at the Board of Appeals.

Sirois told him that they attempted that but were told that the burden of proof was on SSHI.

Eaton stated that they also brought it up at quite a few Planning Board meetings, but it was never clear to the Board that there was ever any intent to abandon by the property owner.

Katsiaficas explained the next steps as he understood the process to date. He went on to say that there was an application before this Board, there were a number of meetings where the public had opportunities to speak. The applicant has the burden to prove that they are entitled to a permit, that they meet the standards to get one. The abutters have the burden of showing abandonment. He went on to say that he assumes that there were public hearings held on this matter. There was an appeal filed, but the BOA did not make a decision because they felt there was not sufficient facts and they remanded to PB for further finding of fact only. Tonight is just a supplemental decision that will be reported back to the BOA for their decision on the entire appeal. He added he didn't know if there would be additional comments allowed at that hearing or not.

Maltese asked for clarification on abandonment – if buildings had not been inhabited for a period of time, but tax bills and water/sewer bills continued to be paid – would that be considered abandoned?

Katsiaficas stated that would be up to the Board to determine if they thought there was an intent to abandon or discontinue use.

Sage asked audience member, LeeAnna Libby about individual metering on these units. Libby is a supervisor at Great Salt Bay Sanitary District.

Libby and Abbotoni (Scott) answered that there was 2 meters, 1 for the units in the house and 1 for everything else. They both told Sage that this was a fairly common practice.

Sage wanted to clarify for the record that the abutters HAVE come before the Board and she doesn't believe they have been given adequate opportunity to present their concerns and evidence. They were constantly told that the burden of proof was on SSHI and she wants to ensure that they are heard and they don't keep getting bounced back & forth. She would like it on the record that this Board is making it clear to them that they will get a voice somewhere.

Dater stated that the Planning Board COULD recommend that the BOA hear them at the public hearing.

Eaton agreed. This Board should recommend that the BOA hold a public hearing and allow the public to speak.

Sage stated that every time the abutters attempted to present their evidence on abandonment they were stopped. It is partially the reason that she did not vote with the majority on this, because she wanted to hear that additional information. She stated that she appreciates their frustration and wants it publicly known that they will be given consideration.

Eaton noted that the Supplemental Findings of Fact and Conclusions of Law had been reviewed by all and changes/additions were noted by the Attorney, and that copy was submitted for the Board's use.

Katsiaficas told the Board that they could vote on the document with the changes made and then have the Planner make the changes on a hard copy to be signed at a later date.

Maltese wanted to clarify that they were not voting to decide anything, only that the information included in the Findings of Fact before them was accurate.

Eaton confirmed that was correct.

Sirois wanted verification that they will be heard. She went on to say that it is the Planning Board's job to hear them so what happens if the Planning Board makes the recommendation to BOA, but BOA refuses to allow that? Where will they be heard? What's their next step after BOA – court?

Eaton stated that in his opinion the only place to change the decision was BOA – nothing said at this level is going to change any Planning Board decision.

Dater told the Board that they could take a vote on this recommendation.

Katsiaficas asked the Board how many times did they hold a public hearing on the SSHI matter?

Dater was unsure of the exact number but stated more than once.

Katsiaficas stated that there appears to have been ample time for the public to voice concerns then.

Sirois stated that they were never heard on the abandonment issue because they were continually told that SSHI had the burden of proof, not the abutters.

Katsiaficas clarified that the applicant in any Planning Board proceeding does have the burden of proof that they've met the criteria required to be granted a permit under Town Ordinances. It's up to the Appellants to prove that the applicant has not met that. He also stated that abandonment is generally a consideration for non-conforming use – this matter is not a non-conforming use. This Board can make a strong suggestion, by motion, to BOA if they wish.

Hunt stated that there were definitely more than 1 public hearing where the public was permitted to speak their mind. The process is what it is and if someone isn't satisfied with that then Court is the next step. He'd be shocked if BOA agrees to hear any further info.

Sage stated that she does not support the Planning Board decision. She doesn't believe that they were given the chance to speak or present evidence and this Board mislead them. She doesn't believe the Board was given all the information available.

Eaton did not agree with Sage – he told her they were permitted to speak repeatedly.

On motion Hunt / Genthner to accept the supplemental findings of facts and conclusions of law for the SSHI matter remanded by BOA, as reviewed with the noted amendments.

**VOTE: 4-1 IN FAVOR  
(SAGE)**

On motion Maltese / Sage to recommend that the Board of Appeals allow the neighbors & abutters to argue the abandonment issue.

**VOTE: 4-0-1 IN FAVOR  
(HUNT ABSTAINED)**

2. DAMARISCOTTA MAIN STREET, LLC: 435 MAIN STREET (GUN CLUB ENTRANCE) MAP 1 LOT 056-001 – HIGHWAY COMMERCIAL DISTRICT – REVIEW DRAFT NOTICE OF DECISION (NOD) OF APPROVED SITE PLAN BY PLANNING BOARD ON DECEMBER 4, 2017. (PUBLIC COMMENT ONLY AT THE CHAIR’S DISCRETION).

Dater told the Board that the DEP Stormwater permit has been received from the Applicant – a copy is in the Board’s packet.

The Board reviewed the draft Notice of Decision. Dater noted input from Town Manager in respect to the sidewalk – also included in their packet.

Dater read the points aloud.

- 3.A) Begin stated that she didn’t feel that there was any PB discussion on the proposed landscaping plan, in terms of what & where and she didn’t really agree with some of their choices for plantings.

Dater stated that now is the time to change the NOD and specify if the Board wants.

Katsiaficas asked the Board if the existing ordinance is specific on species used in landscaping.

Dater told him it was not specific.

Katsiaficas stated that if the application has actually been approved, the NOD must reflect only what was approved but the Board. The Board can’t change approvals previously made. He would suggest that the Board include the date of the landscape plan approved, in this case the November 28, 2017 plan.

Sage asked if the Planning Board can legally change their mind.

Begin told her that the Board can walk back any decision made.

Katsiaficas state that a motion for reconsideration could be made.

Hunt stated that he felt the landscaping plan looks pretty busy & full to him.

Eaton agreed & stated that he didn’t see a problem with the landscape plan.

Katsiaficas suggested that the Board change the way they do the approvals going forward. He suggests that there be a motion & vote recorded on each individual standard, instead of a blanket approval of the application.

Dater confirmed with the Attorney that the appeal period starts from the date that the Chairman signs the NOD.

- 3.D) The Board directed Dater to change shall to will in the following sentence:

“..The applicant WILL turn off all outdoor lights after the stores are closed for the night, but several wall pack lights could stay on as security lights”

- 3.H) Sage requested that the wording “the Board approved...” be changed to either reflect the actual vote of the Board or the statement changed to “the Board approved by a majority vote”

The Board was fine with that change.

Sage asked the Attorney if this decision could be revisited because the Board’s reasoning doesn’t seem very strong. There’s been a lot of discussion about it at recent Selectmen’s meeting.

Katsiaficas told her that the Board granted approval. The Board CAN reconsider the approval and the reconsider the waiver, but his question to the Board is WHY did the majority of the Board approve the waiver? He urged the Board to include the specific reasons it was approved in the NOD.

Eaton explained some of the reasons included; Sale ability for the owner, pedestrian safety within the complex, the surrounding businesses’ parking location, and the ordinance allows it with proper screening - the applicant’s suggestion of a 4-foot berm at the front to aid in screening helped as well.

Hunt stated another very important reason was the feedback from the Fire Chief on Fire vehicle access to the building/site in case of an emergency.

Sage stated that she did not agree with the Fire Chief’s reasoning - there were no power lines to be concerned about. A firetruck can pull right up on the grass in front – they would if they were at her house fighting a fire.

Genthner rebutted Sage’s reasoning – stating that the Chief voiced concerns about parking a firetruck on the front grass due in part, to the unstable ground.

Sage didn’t agree, stating that a fire lane would be sufficient for this purpose. The citizens of Town have been very vocal recently that they want the Board to honor the ordinance.

Genthner reminded her that the same ordinance states that the Board CAN grant a waiver on this matter if they feel there is sufficient reason. He feels the Board had sufficient reasons and that’s why they voted in favor.

Sage didn’t agree with him.

Genthner told her that’s why she voted against it and It’s recorded that way.

Katsiaficas urged Dater to include these specific reasons in 3H of the NOD.

- 3.I) Dater told the Board that the Town Manager has submitted sidewalk specifications to be included in this item so they match what the Town has planned for future sidewalks in that area.

The Board agreed with this change.

- 3.T) Maltese requested Sage's wording of "a majority of the Board determined that the submitted landscape / planting plan satisfies the screening standards..."

The Board agreed. Dater to make changes.

- 3.V) Maltese requested that wording be included here to cover them incase changes to the buildings were made by the developer.

It was agreed to include additional wording to the effect of:

"..In the event of significant changes to the exterior of the buildings, the owner shall come before the Planning Board for its evaluation of the conformity of the proposed changes to the requirements of the Site Plan Review Ordinance.."

- 3.H) Begin stated that she thought she recalled the Board saying that the applicant was to come back before them once they figured out what the largest of the buildings was going to be used as.

Eaton thought they might have.

Genthner stated that he recalled saying that it didn't make much sense to require an impact study when they don't even know how the building will be used but didn't recall saying that when they figure it out, they need to come back to the Board so they can decide whether or not they will require an impact study.

Dater agreed with Genthner's recollection.

Begin stated that she was not sure it was the intent of the Board to give them car Blanche approval for the whole development, especially the very large building in the back, in this one step. There was discussion about coming back before the Board.

Katsiaficas again stated that the NOD needs to reflect what the Board actually approved.

Haas Tobey spoke from the audience, stating that he recalled from a previous meeting that the applicant had said that they would come back once they knew what the use of the large building would be.

Eaton agreed.

Dater stated that he would leave it as written in the draft.

Begin expressed concern about that.

Tobey stated that he would defer to the Attorney, but he thought the Board wanted something in there that stated that the



understanding was that they would come back. He went on to say that it was a quick back & forth discussion but he was under the impression that it was sort of a gentlemen's agreement.

Dater & Eaton changed the wording to be:

*"The understanding of the Board is that the applicant will return to the Planning Board when a decision is made on what the use of the large building will be, prior to the issuance of any building permit."*

Katsiaticas suggested that the wording be clear & concise – "The applicant shall return to the Board...."

Maltese asked are they coming back for a Board determination on whether they need to do a community impact study or is it that just that they need to do an impact study when they come back?

Eaton stated that he thinks it means that they need to come back so the Board can make that decision.

DECISION A.5) Maltese suggested that wording be added that allowed the CEO to require the applicant to file for an amended conditional use permit if there is a significant change in use, of landscaping or layout, or of aesthetics of the exterior, or expansion of a business.

The Board agreed.

On motion Genthner / Hunt to approve the Notice of Decision as amended in this meeting.

VOTE: 4-0-1 IN FAVOR  
(SAGE ABSTAIN)

Dater will make the changes noted and the Board can review & sign the updated NOD at their 02/05/18 meeting.

Sandi Day spoke from the audience – she wanted to tell the Board that she is one citizen that thinks the Planning Board is doing a GREAT job, despite the public feedback lately.

3. ZANDER LEE CONSTRUCTION – NISSEN FARM ROAD (EXTENDED)- LOT 4/31-RURAL DISTRICT-REVISED PRELIMINARY PLAN APPLICATION FOR PROPOSED NINE LOT SUBDIVISION ON EXTENDED NISSEN FARM ROAD.

There was no one present for this application.

C. NEW BUSINESS:

D. OTHER:

1. JM AUTO REPAIR – SKETCH PLAN QUESTIONS FOR PROCEEDING.

Dater told the applicant that he can come in to the Planner's office at any time to review the process and get on the February Planning Board Agenda.

The applicant told the Board that it's the same project that he came before the Board with several months ago, but the location has changed to vacant property across from the previous location, currently owned by William Fraser off Business Route 1.

He went on to say that he's currently in business in Newcastle, and not intending to sell vehicles primarily, he repairs them but he may have something out there for sale occasionally.

The Board reviewed the preliminary sketch plan presented by the applicant.

The CEO told the Board that there's a plowed drive into the property if anyone wanted to go out and look.

Maltese asked if he was planning for a holding tank or septic system.

Applicant stated that he will probably have a septic system designed out.

## **2. PLANNER'S REPORTS**

None

## **3. HOUSEKEEPING ITEMS**

Sage mentioned that a checklist for the CEO to use to make grandfathering determinations would help the Board with clarity. The form could become part of the files.

CEO stated that if the Board wanted a list, they should come up with it.

Sage stated that she is willing to sit down with the Planner & come up with one.

Genthner asked if the Planner could reach out to other towns to see what they use. No need to recreate the wheel.

Sage stated that since the Board is having so much difficulty following the Town's requirements for storefront parking and running into the Fire Dept safety issue, it may be helpful to ask the Fire Department to come up with a way that the Board can require developers to present ideas that meet the ordinance requirements AND allow for Fire access in an attempt to stop continually granting waivers.

Eaton stated that there is always 2 sides to every argument. He believes the development in Damariscotta would slow dramatically if the option for a waiver was removed from the ordinance all together and if the sideline setbacks were increased from 15 feet to 30 feet.

Sage suggested a workshop to hash things out.

Genthner stated changes to the ordinance have to go to a Town Meeting vote.

Genthner also stated that taking the waiver option out completely will severely limit development options and if it's limited that much no one will want to come to Damariscotta.

Eaton agreed. He also stated that he thought the intent of that portion of the ordinance was to prevent a sea of cars in front of a business, like at Hannaford, not to fuss about a few cars.

Genthner agreed. He also said that there is a difference between screening and blocking. A screen can be seen through.

Hunt stated that he would like to see people have to put the reasons why parking in the back is better in writing. The main argument he's heard through this whole process is "because it's in the ordinance.." and that doesn't answer the question for him. Taxpayers want businesses that want to come to Damariscotta to be successful here.

E. ADJOURNMENT

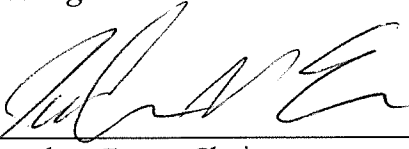
On motion Hunt / Genthner to adjourn the meeting at 8:36 pm.

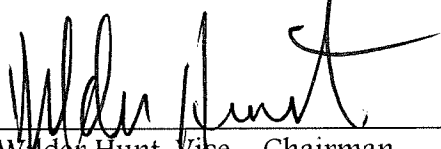
VOTE: 5-0 IN FAVOR


Respectfully submitted by:

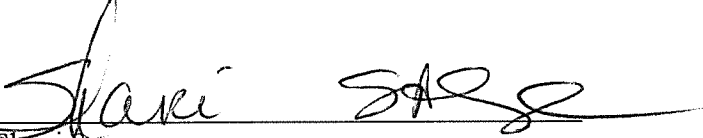
  
\_\_\_\_\_  
Rebecca J. Bartolotta, Deputy Clerk

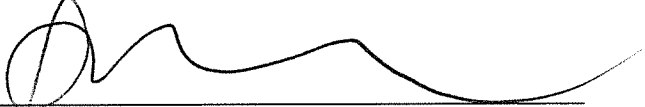
We, the undersigned, do hereby approve the minutes of the January 8, 2018 Planning Board meeting:

  
\_\_\_\_\_  
Jonathan Eaton, Chairman

  
\_\_\_\_\_  
Wilder Hunt, Vice – Chairman

  
\_\_\_\_\_  
Neil Genthner

  
\_\_\_\_\_  
Shari Sage

  
\_\_\_\_\_  
Adam Maltese

Dated: 04/02/2018