

MINUTES  
PLANNING BOARD  
TOWN OF DAMARISCOTTA  
June 06, 2016  
7:00 PM

**MEMBERS PRESENT:** Jonathan Eaton, Wilder Hunt, Stephen Cole, Shari Sage, Bruce Garren

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

**PUBLIC PRESENT:** Sean McGregor, Finish Line Detailing; Corrone Bryant, Abutter Maine-ly Pawn; Jonathan Hull, Attorney for Way(POC); Deb Lucchesi, Joe Sullivan, Rick Burt, Inn Along the Way(IATW); Sherry Flint, IATW; Jeff McKeen, Pemaquid Oyster Co. (POC); Celia Cart, POC; David Lash, POC; Mark Hoffman, Maine-ly Pawn.

**CALL TO ORDER:** Chairman Eaton opened the meeting at 7:05 pm.

A. MINUTES

There were no minutes to review at this meeting.

B. OLD BUSINESS

1. FINISH LINE DETAILING – 74 BISCAY ROAD – LOT 3 /4-1- APPLICATION FOR CONDITION USE PERMIT PURSUANT TO THE SITE PLAN REVIEW ORDINANCE FOR A VEHICLE AND WATERCRAFT WASHING, CLEANING, AND OUTFITTING BUSINESS.

Business Owner, Sean McGregor came before the Board with a revised site plan & application per their request at the previous meeting:

Map & Lot info on plan

Actual sign location on plan & size is 5' x 32" – it will look like the business card handed out previously.

Location of neighbor's house on plan

On motion Hunt / Sage to accept the application & plan as revised.

VOTE: 5-0 IN FAVOR

Dater had the Board sign 2 copies of the site plan and told them he would do a notice of decision.

2. HOFFMAN – MAINE-LY PAWN AT 535 MAIN STREET – C2 DISTRICT: APPLICATION FOR CONDITIONAL USE PERMIT PURSUANT TO THE SITE PLAN REVIEW ORDINANCE FOR OUTDOOR DISPLAY & STORAGE OF SALES GOODS.

There was no one present to represent Hoffman when the Board began discussions on this item, but Mr. Hoffman came later in the meeting.

Eaton: not sure the 4 arborvitae trees listed on the latest submittal is really enough to make a screen.

Cole: the trees need to be located on the map / site drawing.

Sage: no size of tree given in submittal.

CEO: Suggest Board can set a minimum size (height).

Dater: Agreed with CEO and add that the Board can tell him to plant on center of the fence.

Bryant: Impressed with what work has been done by Mr. Hoffman thus far. They are concerned about the lack of a hedge, STILL, for screening that the Board has told him he needed to install. It hasn't been timely and it should be more than just the 4 bushes noted.

Eaton: Concerned that if this Board tells him what to plant where he (Hoffman) will say no because no one on this Board is an expert in these field.

Garren: At this stage, this could be done in 5 minutes if Mr. Hoffman & his plant guy came to the meeting to answer these questions.

Eaton: is there any State guideline for proper screening?

Dater: never seen anything

The Board expressed concern at doing this applicant's job & setting a precedent they do not want to for future applicants.

Garren: The Board cannot be in the business of dictating species or size without the plant guy.

Cole: it's not done with other applicants.

Dater: The Town Manager would like to have a discussion with the CEO and the Planner depending on what the Board decides tonight.

Eaton: not much this Board can do tonight.

Hunt: Can't the Board put conditions on the application – no outside storage until the ordinance is adhered to.

Sage: Yes! It would be motivation to comply.

Eaton: Not sure it's a Planning Board thing – it's a CEO decision. Board can recommend no outside storage until a valid conditional use permit is issued.

On motion Hunt / Sage to place a condition that Maine-ly Pawn not be allowed any outside storage on site until the conditional use permit has been issued.

CEO notified the Board at 7:30pm that Hoffman was on his way to the meeting.

Eaton told Hoffman that it would have been helpful if he'd brought his plant guy to the meeting to explain the submittal.

Hoffman: He's not available – I can bring him next time.

Eaton: 4 arborvitaes for 70 feet of fence?

Hoffman: that's what he said would work.

Eaton: I'd really like him to convince us of that.

Hoffman: Ok!

Hunt: re-made his motion in Hoffman's presence.

Hoffman: Make whatever motions you want – I do not care. What's outside right now is going to stay outside – it's not for sale and it's less than 1% of what was there. All done dancing around on this – it's not fair to enforce something on me that isn't enforced on every other business in the C2 district. I'm not going to waste Josh Hatch's (plant guy) time having him come in here & convince the Board of anything.

Garren: That's the process every applicant uses.

Eaton: no height mentioned on submittal.

Hoffman: it was supposed to say 72" – that's 6-foot trees- that's what we were planning on planting.

Eaton: 4 would be fine

Sage: Full sized at 6-foot when planted?

Hoffman: not full sized – these trees continue to grow to 30+ feet – there were going to be 6 feet at time of planting.

Dater: idea on distance from trunk to trunk?  
That's not included on submittal.

Hoffman: no – guess I am ill prepared. I wasn't planning to attend tonight's meeting until I got a text telling me there was a meeting and that I probably should attend. Didn't see it in the LCN.

Dater: Emailed agenda.

Hoffman: Didn't get.

Garren: if Hoffman was not properly notified of this meeting, it might change his view.

Dater: Thinks he can check his records to prove he did send notice of the meeting.

A member of the audience told the Board that Mr. Hoffman was told at last month's meeting that he would be on the agenda this month and he agreed to be here.

Garren: if we can communicate clearly with Hoffman what he needs to bring and that he needs to be here- we can postpone any motion until next meeting at this point.

Dater: To clarify - the Board would like to see 6-foot-tall arborvitae – spaced 4 foot on center trunk to trunk for 100 feet of fence?

Eaton: the motion is very clear and we need to vote on it. We need to send him a list of what is needed – specifically.

Dater: can do draft with Board's direction.

Eaton: 4 foot on center may be too close –5 foot should be adequate.

Cole: How can the Board be certain WHEN Hoffman will appear with the required items so they can act? It clearly has to be tabled at this point. Board can recommend that the Town take whatever enforcement action they feel necessary given the length of time this has been before the Board.

Board agreed

CEO: Town Manager sent an email that said if this was not approved at tonight's meeting it was being sent to Attorney's Drum & Woodsum first thing in the morning.

Attorney Hull spoke from the audience and told the Board that they could deny the application and that would move it to the next step of enforcement.

Eaton: It's been denied many times.

Hunt: what if we retract the motion / second on the floor and then motion to accept the application BUT it is voted down.

Hunt then retracted his earlier motion. Sage retracted her second.

On motion Hunt / Sage to accept the application for conditional use permit as presented.

VOTE: 0-5 OPPOSED

3. PEMAQUID OYSTER COMPANY, INC – DAMARISCOTTA RIVER AT BRIGGS ROAD  
EXTENDED OFF BRISTOL ROAD – LOT 1/6 – RESIDENTIAL SHORELAND ZONE –  
APPLICATION FOR PERMANENT PIER.

Eaton requested to be recused from this item due to conflict of interest – he works for both sides of the matter and is not comfortable participating in votes regarding it.

On motion Hunt / Cole to permit Eaton to recuse himself from this portion of the meeting.

VOTE: 4-0-1 IN FAVOR

Vice Chairman Hunt took over this portion of the meeting.

Hunt reviewed that at the last meeting the Board voted that the application was complete.

Hull: Which application? There are 3 ordinances at play here.

Eaton: Site Plan Review Application

Hull: Shoreland Zone Application?

Hunt & Eaton reviewed the file to locate Shoreland Zone with no luck

POC: Did submit that application back in March.

Dater: Yes it was submitted – He then reviewed the entire file & located the Building / Land Use Application that stated Shoreland was needed – which requires Planning Board review / approval.

Hull: That's not it.

Board asked POC if they had a copy of what they submitted.

POC: Should definitely have a copy

Dater: Previously recommended to the Board the requirements necessary for the Shoreland permit were included in the POC Natural Resource Protection Application, which had been submitted with their building / land use permit application to the Town.

Hull: A building permit application is not the same as the application for shoreland zone permit.

Dater: There has never been a separate application for shoreland zone permit – not since he's worked for the Town. The process has always been started by a building / land use permit application – which indicates on it whether other permitting is needed, after a review by the CEO.

Hunt reviewed the building / land use permit in the file aloud – box #25 says “additional permit approval & inspections required” and Shoreland, Army Corp of Engineers, and DEP are all checked off by the CEO. Believes Dater is saying that this application is what's used as the Shoreland Permit Application.

Eaton: Never seen a separate Shoreland Zoning “Permit” in his 20 years on the Board.

Cart showed the Board an email to her from Dater on February 2<sup>nd</sup>.  
Hunt read aloud:

“Stanley Waltz, CEO and Anthony Dater, Town Planner reviewed your Pemaquid Oyster Company application on February 2, 2016 for a new permanent pier with attached float & dock in the Damariscotta River at lot 1/6 off Bristol Road in the Shoreland Residential District. We conclude that you require a Town Shoreland Zone Permit from the Planning Board pursuant to Section 14, table 1(14) Aquaculture and (17)B Permanent Piers, docks; and section 15.C Piers, Docks, Wharfs, Etcetera. Please contact Town Clerk, Michelle Cameron by February 22<sup>nd</sup> if you intend to be on the Planning Board's Agenda for its March 7<sup>th</sup> meeting. Your NRPA application appears to fulfill the Town's Shoreland Zoning application requirements as well, so no separate submittals to the Board seem necessary.”

Hunt: That last sentence seems to be the key statement in this.

Hull: Request a copy of this email be put into the Board's records.

Eaton: agreed.

Dater: It should be but can make a copy.

Hull: Does the Board have a Land Use Application before it?

Cart: The Land Use Ordinance first dates to 1998. Pemaquid Oyster Company's Property deed in 1996 pre dates the ordinance and is grandfathered.

Hull: The lot & the use MAY be grandfathered but a new structure in not and would be subject to the Land Use Ordinance. The Land Use Ordinance also says decisions are made by the Selectmen, not the Planning Board or CEO. Looking for clarification on why the Select Board defers that decision.

Dater explained the process in place ever since he has been with the Town: Every application goes to the CEO, because the Selectman have appointed a CEO to do that; the CEO then determines what, if any additional permits are required, such as Shoreland Zone or Site Plan; if it's a permit in Planning Board jurisdiction, the application is passed on to the Planner as agent for the Planning Board to be reviewed.

Dater: Concluded that the POC NRPA application met or exceeded all Town Ordinance requirements.

Hull: it says application not "other documents". It is his opinion that a building permit with a checked box & other documents does not meet the technical requirements and is NOT a proper Shoreland Zone application.

CEO: the building permit IS the Land Use Application – there is no other in the Town of Damariscotta.

Hull: Land Use Ordinance does not permit commercial use in a residential zone. Trying to determine if the Land Use permit is before this Board tonight.

Dater: CEO already mad determination on the Land Use / Building Permit. This Board is reviewing the Shoreland & Site Plan.

Garren: Where does the proposed structure fall with regard to the high water mark?

Lash: it is all below the high water mark.

Garren: So it does not extend above the high water mark?

Lash: No.

Dater: Board has communication from Town Attorney regarding this question.

Hull: Care to share that communication?

Dater made Attorney Hull a copy.

Garren: it is the opinion of the Town Attorney that there is no Land Use Ordinance jurisdiction below the high water mark of this body of water. The definition of the boundaries of municipal zones in the Land Use Ordinance end at the high water mark, therefore the Land Use Ordinance is not involved in this discussion – which is what CEO was saying. The Shoreland Zoning Ordinance is a different matter – and that is how it came to be at the Planning Board.

Hull: News to him – so he will need to do some research to find out if this opinion is correct.

Hunt: Planning Board did previously determine that this application was complete – there is a difference of opinion among the parties involved – but this Board cannot use those differences in their decision making process. Suggest that the Board take a vote to approve this application and let the rest play out however it may.

Hull: In his opinion the definition of shore is questionable – would like more time to research before the Board makes any decisions. Believes that the State Law actually defines shore as low water mark.

Hull: Would like to discuss the applications that ARE before the Board. He had previously submitted 2 memorandums outlining his concerns about these 2 ordinances (Shoreland & Site Plan) and how the Board should analyze them, in his opinion.

Attorney Hull reviewed the memo's and the differences of opinion between himself & Planner Dater. Agrees the lot & the use is grandfathered, but reiterated that the structure is not. He does not agree with Mr. Dater's opinion that this is considered an accessory structure to facilitate the grandfathered use. You cannot have an accessory structure if there is no principal structure present.

Garren: Is that a definition in the law?

Hull: Shoreland Zone is quite specific in its definition of accessory.

The non-conforming, grandfathered provisions are spelled out separately in the ordinance – a grandfathered use does not allow for a new structure to facilitate the grandfathered use.

Each ordinance states that if there is a conflict between ordinances, the strictest shall control so if the project cannot be approved under one ordinance, it cannot be approved at all.

Garren read aloud the definition of accessory structure or accessory use from the ordinance. The definition states use or structure.

Hull: Shoreland Zoning is State wide and will be sustained by court decisions in the State of Maine.

Dater: Aquaculture is a permitted use in the residential zone.

Hull: Agreed – but the structure is not. Depending on the actual date of initial use, there may be an issue with the actual use being grandfathered as well.

Celia Cart attempted to read aloud a draft agreement –

Hull objected stating that there is a principal law that says documents made in negotiation of settlement are not admissible in a proceeding. Hull told the Board that there were a series of good faith negotiations that became void tonight.

Cart: Not good faith.

Cart: Pemaquid Oyster Company will just do a temporary structure. There will be no permanent dock – no permit required.

Jeff McKeen: During the original visit to the Planning Board in 1996 they talked about all kinds of uses of the property – building a road, building a building, building a hatchery, and building a pier - all of which seemed allowed because it was aquaculture in the Shoreland Zone – on the river. Did not apply for a commercial pier, they applied for a residential sized pier so it would fit in with others in the neighborhood – would like to ask this Board to act on the applications before them.

Sage: POC would still be able to increase the scope of their business without the pier correct?

McKeen: Suppose so.

Hunt: A lot of opinions in both directions & this will likely get argued beyond this room, in the end the Board needs to make a decision.

On motion Cole / Sage to approve the application for a permanent pier, ramp & seasonal float for Pemaquid Oyster Company, based on the advice of the Town Attorney, Town Planner, and CEO.

Garren: Not completely clear that the Board has gone through the process sufficiently to be able to approve the application vs. saying the application is complete and ready for further review because the Town Attorney ends her opinion with “..require review by Planning Board under section 15C in the Shoreland Zoning Ordinance..” which is the section on piers – this Board has not even looked at that yet.

Cole: we do have Daters analysis of how this application relates to the Shoreland Zoning Ordinance from the last meeting.

Hunt: it's been reviewed by 5 Indian tribes, 3 or 4 State departments etc. – if they can't find anything wrong it's doubtful this Board's resources would find any more detail.

Dater recommended that the Board review section 15C of the Shoreland Zoning Ordinance to ensure that the application meets those standards.



Hull: not even sure if the present use is grandfathered at this point. Not sure the Board can make a decision until that has been determined, assuming the Board's analysis depends on the present use being grandfathered.

Garren: Not a requisite of the motion on the floor so it's not assumed and the opinion from the Town Attorney doesn't mention the word grandfathered.

The Board reviewed the 8 standards included in section 15C:

- 1) Dater: N/A – applicant is not proposing to do anything above high water.

Hull: Disagree – drawing indicates it is above high water mark.

Cart: No it's clearly not above high water mark. Drawing may not be to scale.

Dater: The NRPA application should answer that.

Cart showed the drawing that was included in the NRPA

- 2) N/A – no beach area
- 3) N/A – no facility
- 4) N/A – no facility – not wider than 6'
- 5) N/A – no new structure on the dock
- 6) Permit granted from required agencies
- 7) N/A – no new structure on dock
- 8) Not going to be taller than 20 feet

VOTE: 3-0-1 IN FAVOR  
EATON WAS RECUSED (1)  
HUNT DID NOT VOTE

4. INN ALONG THE WAY – 741 MAIN STREET (ROUTE 1B) – LOT 3/46- C2  
HIGHWAY COMMERCIAL AND RURAL DISTRICTS – PRELIMINARY PLAN REVIEW  
OF PROPOSED PLANNED UNIT DEVELOPMENT (PUD) RETIREE HOUSING  
CAMPUS.

Architect Rick Burt gave the Board an overview on Inn Along The Way's meeting with the DEP. The DEP's preliminary decision says IATW doesn't qualify as a subdivision so they would like to request that they not be required to complete the Damariscotta Subdivision Application – assume the State statute takes president over Town.

Dater: not necessarily – DEP's definition is not the same as the State definition of Subdivision. State statute says 3 dwellings constitutes a subdivision but could get opinion from Town Attorney.

Board agreed to have Dater get an opinion from MMA / Town Attorney

Garren: Will cottages be individually owned?

Flint: owned by IATW as non-profit & rented to residents

Burt: not subdividing anything at this point.

Cole: how was the demand determined?

Flint: Decades of hospice experience – the hospice portion was the beginning; the cottages came later as a result of what people from the area indicated they were interested in seeing.

Burt: Would like to get on the agenda for next month.

5. VINE STREET LLC – VINE STREET EXTENSION – LOT 3-94-1- C2 HIGHWAY COMMERCIAL DISTRICT – PRELIMINARY PLAN REVIEW FOR PROPOSED MULTI-UNIT RESIDENTIAL DEVELOPMENT.

There was no one present representing Vine Street, LLC.

C. NEW BUSINESS

NONE

D. OTHER

1. Sage posed a question for clarification – the businesses across from Hannaford are in a strip mall – is Yellowfront mall area also a strip mall? Would they get their own sign or would the Town ask them to be condensed in a ladder sign like the optometrist? Right now there is both happening.

Garren: believe the ordinance uses words like “encouraged” to condense space. Remember whatever is there now is grandfathered.

2. Ceo brought up the emails re the shop Smitten. A concerned citizen wanted to have clarification on what the Board actually approved – didn’t think a retail shop was permitted.

Sage: knew they were selling vintage items.

Hunt: believe it was approved as a home occupation

CEO: home occupation is not allowed in that zone – but an antique shop or an art shop is.

Garren: Why not home occupation?

CEO: because it’s residential

Garren: thought home occupation allowed in residential?

Dater gave the file to the Board to review with the zoning map. The Board still feels that home occupation is allowed as conditional use in the residential zone as they approved previously.

3. QUESTIONS FROM THE PUBLIC TO PLANNING BOARD

None

4. PLANNER'S REPORT

None

E. ADJOURNMENT


On motion Hunt / Garren to adjourn meeting at 9:30pm

VOTE: 5-0 IN FAVOR

Respectfully submitted by:


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

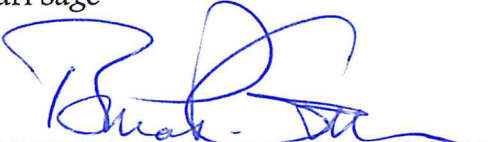
We, the undersigned, do hereby approve the minutes of the June 06, 2016 Planning Board meeting:

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

  
\_\_\_\_\_  
Wilder Hunt, Vice - Chairman

  
\_\_\_\_\_  
Stephen Cole

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

  
\_\_\_\_\_  
Bruce Garren

Dated: 09/06/16



ADENDUM TO THE MINUTES  
PLANNING BOARD  
TOWN OF DAMARISCOTTA  
June 06, 2016  
7:00 PM  
TO BE ATTACHED TO THE OFFICIAL MINUTES

1. FINISH LINE DETAILING – 74 BISCAY ROAD – LOT 3 /4-1- APPLICATION FOR CONDITION USE PERMIT PURSUANT TO THE SITE PLAN REVIEW ORDINANCE FOR A VEHICLE AND WATERCRAFT WASHING, CLEANING, AND OUTFITTING BUSINESS.

*On motion Hunt / Sage to accept the application & plan as revised.*

**VOTE: 5-0 IN FAVOR**

*Dater had the Board sign 2 copies of the site plan and told them he would do a notice of decision.*

It was the Board's intent to approve the application & plan as submitted / revised.

Respectfully submitted by:

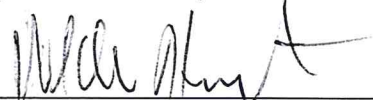


Rebecca J. Bartolotta, Deputy Clerk


We, the undersigned, do hereby approve the addendum to the minutes of the June 06, 2016 Planning Board meeting:



Jonathan Eaton, Chairman



Wilder Hunt, Vice – Chairman



Stephen Cole



Shari Sage



Bruce Garren

Dated: \_\_\_\_\_

09/06/16

