

**MINUTES
TOWN OF SEBAGO
PLANNING BOARD MINUTES
7:00 PM
Tuesday, June 11, 2019
TOWN OFFICE BUILDING**

I. Call to Order

Paul White called the meeting to order at 7:01 p.m.

Present: Jim Jansz, Dick Perry, Andrew Plummer, Tina Vanasse, Paul White, Code Enforcement Officer Brandon Woolley, Recorder Desirae Bachelder.

Guests present: Mary & James Ernst, Brenda & Robert Walker, Christine & Robert Hagan, Daphne & Walt Lindell, Ron & June Johnson, Barbara & Ronald Pajak, Kevin Howley, Phil & Claudia Lowe, Dot O'Donnell, Mabel Olden, Phyllis & Charles Fitzgerald, Gerry Park, Edie Harnden, Joseph McMahon, Donelle & June Allen, Cindy Thorne, Michele Cummings, Donna M Cook, Grosvenor Newcomb, David Heath, Paul & Sibylle DeBonis, Jim Yates, Sue & Douglas Newton, Marcia Christensen, Christopher Harrington, Zoe Greene, Anne & Al Blanchette, Margie Jansz, Charles & Karen Frechette, John & Cheryl Cummings, Kelly Haley, Maggie Bannon, Kristen Ineson Camelio, Ed & Tracey Keenan, Nicole Parkinson, Jean Bailey, Linda May, Cathy & Alan Munroe, Eleanor & Raymond Stickles, Laurie Logan, Claudette Minott, Deb Howard

II. Public Hearing #1 – Site Plan Review – Proposed Use of Property is an Event Venue – (Property owned by Mary and James Ernst) – (72 Shore Rd) – Map 21, Lot 26

Mary Ernst introduced herself and her husband James as the new owners of 72 Shore Road and it is her understanding that the property has been a rental for some time. Mrs. Ernst would like to continue renting the property as well as hosting weddings and other events. Mrs. Ernst stated that the plan is to rent and hold events year round with fewer events in the summer time when there are more residents in the area.

Ed Keenan raised questions about hours of operation, loud music, types of weddings and how adding 80 event guests would be part of the “good neighbor” policy. Mrs. Ernst explained that she has established “quiet hours” meaning events will be concluded by 10:30 pm, and event will not start until 10:00 am.

Kelly Haley commented that she owns the sister house that mirrors Mrs. Ernst’s house. She has concerns about her kids. Mrs. Haley does rent her house a couple weeks out of the summer, but she and her family try to use the property as much as possible. She is concerned about the safety of her children with strangers that an event venue will bring, as well as parking, port-o-toilets, shared access to the beach (they have a deeded right-of-way), water usage of the shared well, emergency vehicle access, alcohol consumption, ADA and handicap accessibility.

Nicole Parkinson asked about Mrs. Ernst's plans for parking for 80 guests. Mrs. Ernst explained that it is not her intent to have parking at the location. She has been working with Code Enforcement and has spoken with the Elementary School Principal Kirsten Goff about parking at the soccer field.

Ron Pajak stated that parking is the number one concern safety wise. Brandon explained that permission to use Town property (the school) for parking has not been resolved yet. Mr. Pajak asked that if the Ernsts receive permission to park at the school can he park his boat there. Paul White stated that it has been noted that at the present time there is no arrangement for parking.

Maggie Bannon asked how allowing the Ernsts to park vehicle at the school would affect the renovations being done to the sidewalks and parking lot at the school. As taxpayers what can the people with concerns do. Brandon explained that the Town owns a large parcel of land and the school's property, which is still Town owned is situated in the middle of the Town property, but is controlled by the School Board. The space that the applicant would like to use for parking is outside of the jurisdiction of the School Board, therefore the applicant needs to ask the Board of Selectmen for permission to use the property for parking. The next Selectmen's meeting is Tuesday, July 18, 2019 at 6:00 pm.

Paul DeBonis remarked that it sounded like the applicant is putting the cart before the horse.

Tracy Keenan explained that she and Kelly Haley are here as representatives of the West Shore Association. After watching the video from the May 21, 2019 meeting she believes there is some truth to what is being presented tonight. Fifteen to twenty events a year, overnight guests of eighteen to twenty-four, wedding guests of eighty to one hundred, four to six port-o-toilets to the right side of the house along the fence. She wanted to clarify that of the twenty four properties that abut Mrs. Keenan there are two that intermittently rent through the summer; the majorities are full time residents but they are all owner occupied residences. Mrs. Keenan stated that the purpose the Site Plan Review of this Board is to sustain the comfort, health, tranquility and contentment of residents, which she feels is not happening tonight, to promote and protect the health welfare and safety of the Town of Sebago. We (West Shore Association) are asking the Board to deny the Site Plan Review because it violates the standards and criteria in Section H specifically number 3 Congestion, Unsafe Conditions. 4 Groundwater Protection: waste disposal, there has been talk of port-o-toilets but not dumpsters or having trucks get down there. 5 Hazard/Nuisances: we (the association) have a deeded right-of-way to the beach, adequate provision is supposed to be made to avoid any hazards to travel on public or private ways. 6 Impact on Neighboring Properties: we haven't heard from any if the properties directly abutting the property although it is such a dense neighborhood that the West Shore Association considers themselves abutters because of the right-of-way. 7 Off-Street Parking and Loading: this is still up in the air but what happens when a guest who can't walk asks someone to go get the car, there are children and grandchildren walking from house to house, this is a big safety concern. 15 Special Features and 16 Traffic Movement: Mrs. Keenan stated that the Association is not opposed to this property remaining a rental they are opposed to the event venue. She pointed out that Rockcraft has 9,000 square feet of property with 850 feet of private water front. The Association has 308 feet of shared association waterfront. She

again asked that the Board deny the application based on the criteria that she has mentioned.

Mary Ernst stated that she and her husband are trying to figure out the best way to move forward with this project. There are seven bathrooms that they would be willing to use instead of port-o-toilets. She explained that they have a large deck with a lot of ground space so that weddings aren't on the beach but are in view of the beach. The event planners and vendors are required to have liability insurance. Shuttles have been mentioned as an alternative to people walking or driving to the property.

Charles Fitzgerald is a direct abutter to the property. He asked what the Board is willing to do to ensure the safety of the residents is taken care of. Paul White explained that the Town is not obligated to have a specific demand for security; it is up to the applicant to provide security as necessary. Mr. Fitzgerald stated that the current access to the beach is not handicap accessible and asked what the Town would require be done to make it handicap accessible. Paul White noted that it is a private building not a public building and he is not sure that handicap accessibility would be required for a private building. Mr. Fitzgerald asked if the fact that there is no lifeguard on duty at the private beach, if that would have an impact on the approval of this application. Mr. Fitzgerald asked if the Ernst's had cut more trees than what was allowed through their tree removal permit. Brandon replied that yes more trees were cut than was allowed, but there is a consent agreement and there will be reparations. A planting schedule is in place.

Jim Yates commented that he has a five bedroom house with ample parking for himself and his family. He stated that there is hardly enough from on the beach for 40 people let alone an extra 80 event guests. There is only a ten foot right-of-way leading down to the beach.

Charles Frechette feels that a precedent could be set and if this was happening in any other neighborhood with a similar situation and similar surroundings there would still be a lot of people here with the same response. He asked if there was any recourse to stop wedding/event venues until the Town sets standards for them. Paul White explained that there are standards and there have been other applications for wedding venues that have been approved. It was noted that the other venues were not in as compact an area.

Brenda Walker agrees with many people that the neighborhood does not want a commercial property that will change its character. The port-o-toilets would be right next to her front yard; in her words methane and propane don't mix. Mrs. Walker is concerned what will happen to the property should the Ernst's decide to sell.

Kathy Fitzgerald asked if criminal background checks were required for commercial licenses. Paul White explained that the Planning Board does not approve commercial licenses.

Cheryl Cumming stated that most of the property owners have owned their property for over 30 years. Her concern is for her grandchildren that walk to the beach and how they will be protected from 80 strangers at an event. She understands that someone paying thousands of dollars for a wedding wouldn't want the neighborhood travelling to the beach, but the owners have a right-of-way to the beach.

Kristen Ineson Camelio's concern is for the safety. She works for a catering company and knows that a wedding is more than just one day. There will be delivery trucks for chairs and food among other things. The plan is for the event to be from 10:00 am to 10:30 pm that doesn't include setup and breakdown time so the events will more than likely spill over the planned time.

Gerry Park is a direct abutter to the property, and this project will impact her property greatly. As it is now you have to be very careful and watch what is going on. There have been times when she has been unable to get out of her driveway because of the cars parked on the path to the beach.

Nicole Parkinson noted that Mrs. Ernst has tennis courts listed on three vacation sites and would like to know where they are. Mrs. Ernst explained that this is an error on the sites, there are no tennis courts on site but there are courts nearby.

Grosvenor Newcomb introduced himself as a Sebago resident and former Planning Board member. He stated that there is a lot of concern; he suggested the Board look at any precedents that have been set and all of the rules and regulations. If precedent is set for this project it will open a can of worms for the Town in the future. He observed that there seems to be a discrepancy between what has been presented and what has been said.

Paul White confirmed that an application has been submitted and a copy is available to be viewed at the Town Office.

Jim Yates read a line from his deed: Shall not unreasonably interfere with the use or enjoyment of said sand beach area by others having the right to use and enjoy the same. Mr. Yates explained that this line is in the deeds and in the Association rules.

Maggie Bannon stated that her ex-husband had built the deck that Mrs. Ernst is proposing to use for events over thirty years ago. Mrs. Bannon asked Jim Yates, who is a contractor, how many people he feels that the deck can hold. Mr. Yates explained that he hasn't inspected the deck but size wise it could hold 20 to 25 people. Kelly Haley commented that she just had 25 people in her house which is much larger than 72 Shore Road. It was very tight and her house is in the same set up as 72 Shore Road. She doesn't understand how 70 to 100 people will fit on the property and if all of the rooms are rented that leaves one half bath for 70 to 100 people to use.

Ray Stickles asked if for this kind of occupancy there are any requirements for a sprinkler system. Mr. Stickles explained that he is a Professional Engineer and he worked in risk assessment. He stated that for this increased occupancy there is high fire and health risk. He suggested consulting the Fire Department and EMS in regards to access to this property in the event of an emergency. Another concern is sewer capacity; Sebago Lake is a water supply for Portland, when Mr. Stickles purchased his property he redid the septic system and made it five times bigger than what it was because of the Portland Water District's (PWD) requirements. He suggested checking with PWD for their requirements for 72 Shore Road.

Phil Lowe asked if the property has been residential up until now. It was explained that the building was part of the West Shore Hotel until 1960 when it was divided into separate

residential homes. Mr. Lowe asked for clarifications that if the property was commercial but has been residential for some time wouldn't it lose the commercial aspect after one year of residential use. Tina Vanasse stated that she had read in the ordinances that if commercial use ceases for 12 months then the commercial aspect of the property ceases. Mr. Lowe commented that this makes a difference for access; a residence can have any number of narrow situations for driveways he feels that it is important to define if this is a commercial property going forward, because it may require a change of use. If it is a commercial use then according to the Land Use Standards on page 5-28 commercial uses require between 15 and 30 feet for a one way operation, this would be a two way operation and would require 25-35 feet of width. It is Mr. Lowe's understanding that there is only a 10 foot right-of-way accessing this property. Mr. Lowe asked about the plan to replace the trees that have been cut at the property. Brandon stated that there is a replanting schedule. They need to revegetate with trees at least 2 inches in diameter per the Department of Environmental Protections new definition of a tree. The Ernst's will also be planting blueberry bushes. Brandon commented that the Ernst's did have permission to cut quite a few of the trees. Mr. Lowe expressed his concerns regarding access for Fire and Rescue personnel. Mr. Lowe would also like to see a site plan large enough for everyone to see, because everyone has a different view of what is being proposed.

David Heath commented that this property has not been grandfathered with commercial use. Mr. Heath believes that the Shoreland Zoning Ordinance states that there can be no new commercial uses in the zone. It was mentioned that the minimum lot size in the village district for a commercial use is 80,000 square feet; this lot would not meet the minimum lot requirements. Claudia Lowe asked if the lot is already nonconforming and in the Shoreland zone it cannot be made more nonconforming.

Alan Munroe asked if the Board was reviewing the application as a Site Plan, a change of use or a commercial development. Paul White stated that the Board is reviewing this application as a Site Plan. Alan Munroe then read aloud a statement that he had prepared for the board concerning this project. This statement is attached to and does hereby become a part of the original set of these minutes.

The Public Hearing was closed at 8:12 p.m.

Chairman Paul White called the regular meeting to order at 8:13 p.m.

III. Correspondence

1. Desirae Bachelder advised the Board that Andrew Plummer and Paul White who were absent from the last meeting held on May 21, 2019 have reviewed the minutes from that meeting and listened to the recording of the proceedings. They have completed the "Member's Affidavit Regarding Missed Planning Board Meetings" attesting to this fact and will therefore be allowed to participate in the approval process for tonight's agenda item. The original copy of these affidavits will be filed in the official Planning Board Meeting Minutes file. A copy will also be filed in the Planning Board file for this proposed project.
2. Tina Vanasse submitted an email from Dave Thorne concerning the proposed Event Venue at 72 Shore Rd.

3. Kelly Haley submitted information to the Board concerning the proposed project that is before the Board. (Site Plan Review – Property owned by Mary and James Ernst – Map 21, Lot 26). The original copies will be included in the Planning Board file for this project.

IV. Open to Public Questions

Phil Lowe asked if the Board is going to consider voting on whether or not the application is complete. Paul White stated that the Board is going to review the application, but given all of the concerns raised, especially the fact that parking is unresolved he doesn't feel it would be appropriate to vote. The Board is going to discuss all of the concerns raised tonight.

Alan Munroe stated that from a procedural standpoint he is disturbed by the lack of a plan. He also asked if one of the Board's procedures is to entertain a motion to summarily table this item indefinitely. Paul White stated that a motion like that could happen.

V. Review of Minutes (May 21, 2019)

Tina Vanasse made a motion to approve the minutes from May 21, 2019 as presented. It was seconded by Jim Jansz. Motion carried with all in favor.

VI. Old Business

a. Site Plan Review – Proposed Use of Property is an Event Venue – (Property owned by Mary and James Ernst) – (72 Shore Rd) – Map 21, Lot 26

Paul White thanked the public for attending the meeting and voicing their concerns. Paul explained that the Board has reviewed event venues in the past and approved them. The distinction that has been made is that those event venues were 40-50 acre lots. The Site Walk conducted on June 1, 2019 proved that this is indeed a small lot. There were issues raised including parking, and public safety (Fire and Rescue services).

Desirae Lyle reported that fees have been paid to date.

Paul White noted that in reading the minutes from the last meeting the Board had not voted to accept the application as complete. Paul asked if a larger plan should have been submitted. Brandon stated that he feels a larger plan is not needed and explained that there was some confusion about what standards should be used to review this project. Brandon read aloud Land Use Ordinance Section 1 D. Applicability. "The provisions of the Ordinance shall govern all land and all structures within the boundaries of the Town of Sebago, exclusive of the land and water area subject to the Town's Shoreland Zoning Ordinance." The Land Use Ordinance does not apply to this project because it is entirely within the Shoreland Zone. The dimensional requirements that have been brought up about commercial size lots don't apply and are not pertinent to the

review of this particular proposal. Brandon directed the Board to the Shoreland Zoning Ordinances Table of Land Uses. There is no distinction between residential and commercial; everything within the Shoreland Zone is broken into three zones: Stream Protection, Resource Protection and Limited Residential. This particular project is located in the Limited Residential Zone which allows for a mix of residential uses and commercial uses. There was discussion on what allowed use this project fits. Public and private recreational areas involving minimal structural development; Brandon suggested that this project requires no structural development it involves using a decades old building that has a history of both rental and residential uses. Brandon read aloud the definition for Recreational Facility: "A place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat launching facilities." This proposal falls within that realm of an allowable use that is why it is before the Board. The Board needs to discuss the issues that have been raised tonight: the size and capacity of the septic, whether or not to allow port-o-toilets, signage and hours of operation. These are all valid points that need to be discussed but it is an allowable in the zone and it meets the dimensional requirements of the lot. Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of the Ordinance or of any other ordinance, regulation or statute administered by the municipality, the more restrictive provision shall control. This is why it is reviewed under the Site Plan Review.

The application was discussed at the last meeting but was not formally accepted as complete. Major versus minor developments was discussed as well as a requiring a detailed plan. Brandon explained that a detailed plan is required under site inventory that is associated with a major development. Jim Jansz believes that the application is incomplete due to the lack of a detailed plan and a lack of appropriate parking.

Tina Vanasse suggested that there should be a more detailed business plan that should be formatted to allow the Board to reference a specific part of the plan that doesn't agree with the ordinances. Jim Jansz suggested that the Board should vote on the application presented tonight and when the issues have been resolved, and depending on the outcome of the vote a new application can be submitted, should the applicant wish to do so. Tina agreed and pointed out that more formal business plans have been presented to the Board in the past. She would like a business plan that documents the entire plan for the proposed project. Richard Perry noted that the intent of this project is clear; his concerns are the area where this proposed project is and public safety. There is also plenty of use in that area as it is without additional traffic. Tina believes rooms can be rented but that a venue in that area is an overburden to the beach, the road and the neighborhood.

The capacity and recovery time of the well needs to be tested. There have not been any problems with the well with the current twenty-two family that use it. The well has been in place since the 1970's with no issues. A yield test will need to be done.

Paul White asked Brandon Woolley's opinion on the completeness of the application. Brandon stated that with the concerns that have been raised the application is not complete. More information is needed concerning the parking, water supply and septic, buffers, a formal business plan, public safety and access. The Board asked the applicants their thoughts on the concerns that have been raised and what they would like to do at this time. Mary Ernst stated that she and her husband would like to revise the plan and resubmit the application.

Alan Munroe interjected a point of order that there is a plan before the Board that has been presented, it is Mr. Munroe's opinion that the plan needs to be acted on tonight and be denied based on the concerns raised tonight. A revised application can be submitted at a later date.

Brandon Woolley stated that statutorily the Board has thirty-five days after the Public Hearing to make a decision on the application presented. The Board will need to vote to approve or deny the application now or at the next meeting.

There was some discussion that the public would not be able to speak at the next meeting, because it will not be a Public Hearing.

Andrew Plummer made a motion to allow a second Public Hearing to occur at the July 9, 2019 Planning Board meeting. It was seconded by Tina Vanasse. Motion carried with Paul White opposed and Dick Perry abstaining.

Tina Vanasse made a motion to cease discussion on this subject. It was seconded by Andrew Plummer. Motion did not carry.

Mary Ernst asked for an extension of the thirty-five days, due to the recent passing of her mother.

Dick Perry made a motion to deny the application as presented, with the understanding that the applicant may reapply following the guidelines that have been discussed tonight. It was seconded by Jim Jansz. Motion carried with Tina Vanasse opposed and Paul White abstaining. This will allow the applicants as much time as needed to revise and submit a new application. (**Recorder's Note:** Due to the passing of this motion the previous motion to allow a second public hearing is null and void.)

The Board signed two copies of the Decision Form for the proposed project Shiloh Villa, property owned by Mary & James Ernst. One original will be filed in the Planning Board file for this project, the other will be sent to the applicant.

b. CEO Updates

Nothing reported.

c. Goal Setting Items

1. Review of Application Processing Documents

Nothing reported.

VII. New Business

a. Election of Officers

Andrew Plummer made a motion for Paul White to continue as chair. It was seconded by Dick Perry. Motion carried with all in favor.

Paul White made a motion to elect Jim Jansz as vice-chair. It was seconded by Andrew Plummer. Motion carried with all in favor.

VIII. Adjournment

Andrew Plummer made a motion to adjourn at 8:57 p.m. It was seconded by Dick Perry. Motion carried with all in favor.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Desirae Lyle".

Desirae Lyle
Administrative Assistant/Deputy Clerk