

**Kennebunkport Planning Board
December 3rd, 2014 ~ 7:00 PM
Village Fire Station, 32 North Street**

A regular meeting of the Planning Board was held on Wednesday, December 3rd, 2014. The meeting convened at 7:00 p.m. in the Kennebunkport Village Fire Station.

Members Present: Mr. David Kling (Chair), Greg Reid, John Hathaway, Peter Fellenz, Helen Conaty, Ray Hilwig

Others Present: Werner Gilliam Town Planner, Attorney Amy Tchao

Approval of Minutes: Mr. Hilwig made a motion to approve the minutes from the November 5th & 19th, 2014 Planning Board meetings. Ms. Conaty seconded the motion and the vote was unanimous.

Items:

- **140801 Kennebunkport Conservation Trust / Sebago Technics, Authorized Agent – Site Plan Review – Continued Review** – for approval to construct a new educational, scientific and nature interpretation center with associated site improvements consisting of parking, walkways, landscape and site lighting. [8 Mill Lane, identified as Assessor's Tax Map 09, Block 01, Lot 12 in the Village Residential Zone.]

Mr. Kling introduced the single Agenda item and explained that due to the complexity of this Application, the Planning Board will review and discuss each of the points in Article 10.10 and then hold a straw vote on each item in order to provide Town Counsel a guideline where the Board stands on each particular matter. Attorney Amy Tchao will draft a Final Finding of Fact which the Planning Board will vote on and render their final decision either for or against this Application, Mr. Kling explained. Mr. Kling asked the Board members for their opinion on the procedure described for this evening's meeting. The majority of the Board members agreed with the scheduled procedure. Mr. Hathaway expressed his confusion and concern for the Board to conduct an informal vote on each item rather than a formal vote to approve or reject the Application. Mr. Hathaway also questioned the Chairman of the Planning Board why a Final Finding of Fact is being written by Town Counsel before the Planning Board conducts a final vote.

Mr. Kling acknowledged receipt of a complete summary of all correspondence received as prepared by Lisa Harmon in the Code Enforcement Office.

Town Counsel Attorney Tchao described the document the Planning Board would use in their review of this Application tonight which is a summary of both the Applicant's and abutter's attorneys' drafts of Findings of Fact detailing each point in Article 10.10 of the Land Use Ordinance. Ms. Tchao further explained paragraphs 1 through 20 are background statements detailing the map number, lot number, acreage and other items that are largely undisputed. Paragraph #21 begins the substantive issues, Ms. Tchao explained.

Ms. Tchao explained she changed the wording in the combined proposed Findings of Fact so that a yes vote means the Application meets the standard and a No vote means it does not.

Recording Secretary's Note: All italicized wording is a direct quote from Attorney Tchao's combined proposed Findings of Fact.

Article 4.15.B.4 Nonresidential facilities for educational, scientific, or nature interpretation purposes.

The Board began their discussion of whether or not the River Heritage Educational Center (RHEC) is a permitted use in the Resource Protection zone. Mr. Fellenz and Mr. Reid agreed the tidal mill is a permitted use that has educational purposes but the 30'x40' building attached to the mill is not a permitted use.

Ms. Conaty offered her opinion that the RHEC is a permitted use with the exception of the commercial aspect of renting out the facility for private functions.

Mr. Hathaway agreed with Mr. Fellenz and Mr. Reid that the facility is not a museum and is not a permitted use.

Mr. Hilwig offered his opinion that if this is an educational facility it loses that aspect when it is used for weddings or other events.

Ms. Tchao suggested the Board consider items 1, 3, and 4 together, which are listed below:

1. *Does the proposed new primary structure constitute a permitted nonresidential facility for educational, scientific, or nature interpretation purposes" but not a prohibited museum, community building, or school use?*
3. *Are the proposed production and retail sales of flour and the use of the Project Site for functions "incidental" and "subordinate" to the primary permitted use?*
4. *Does the proposed new structure have for its "primary Purpose" a functionally water-dependent use?*

Mr. Kling offered his opinion that the Ordinance isn't clear so that hypothetically an Applicant could construct a principal building outside of the Resource Protection Zone and then allow them to build an accessory building. Although having three buildings may not be the best solution, Mr. Kling added.

Mr. Kling asked the Board to share their opinions on the grinding of flour and whether it constitutes an industrial use. Mr. Kling stated he does not think it is prohibited in the Land Use Ordinance. The Board came to a consensus the grinding of flour is a byproduct of the educational aspect and is incidental and subordinate.

The Board next discussed the current boathouse on the property becoming an accessory building. Mr. Reid and Mr. Fellenz could not completely accept the boathouse as an accessory building. Mr. Hilwig and Mr. Boaks stated they were both OK with the boathouse becoming an accessory building to the RHEC.

The Board is in agreement on Items 10.10.A.1. b. & c. that the Application meets the Town standard.

After some discussion Ms. Tchao suggested the Board group items d, e, and g together for consideration.

"f. The provision for vehicular loading and unloading and parking and for vehicular and pedestrian circulation on the site and onto adjacent public streets will not create hazards to safety." Mr. Reid and Mr. Kling agreed there is no safety issue.

Mr. Hathaway commented whenever you add more traffic to an area you increase the safety aspect.

After lengthy discussions the Board came to a consensus the Application met the standards for items h, i, j, k, l, m, o, and p.

The Board moved on to discuss items d, e, g which are:

d. The provisions for buffers and on-site landscaping provide adequate protection to neighboring properties from detrimental features of the development."

e. The proposed use will not have a significant detrimental effect on the use and peaceful enjoyment of abutting property as a result of noise, vibrations, fumes, odor, dust, glare or other cause;

g. The proposed use will not have a significant detrimental effect on the value of adjacent properties nor one which could be avoided by reasonable modification of the plan."

Mr. Kling offered his opinion that the noise and traffic can be dealt with restrictive conditions upon approval and offered to eliminate trolleys and buses in the parking area. Mr. Boaks agreed with Mr. Kling. Mr. Hathaway and Mr. Reid shared the opposite opinion that there is a significant detrimental effect on abutting properties.

In addressing the issue of noise from the operation of the mill, the Board agreed the Applicant would have to be compliant with the Town's Noise Ordinance.

After much discussion on adequate landscape buffering to prevent glare from headlights on adjacent properties, potential dust from the mill grinding and noise from possible events held after hours, the Board members could not reach a unanimous consensus. Mr. Hathaway raised the issue that all discussions deal with the possible impact on the value of the abutting properties.

n. The proposed use will not have an adverse impact on significant scenic vistas or on significant wildlife habitat which could be avoided by reasonable modification of the plan."

Due to the extensive review from the Maine Department of Inland Fisheries and Wildlife, the Board agreed the Application does not have a significant impact on wildlife habitats.

Ms. Conaty, Mr. Hathaway and Mr. Fellenz agreed there is a significant adverse impact on the scenic vistas. Mr. Reid, Mr. Kling, Mr. Boaks and Mr. Hilwig disagree with the other Board members that the Application does not have a significant adverse effect on the scenic vistas. The Board voted the same in their discussion of item 10.10.B.1.e.

10.10.B.1. When the proposed development will be located in the Shoreland Zone or Resource Protection Zone the Planning Board shall approve it with conditions if it makes a positive finding based on the information presented that the proposed use:"

The Planning Board came to a unanimous affirmative consensus on items a, b, c, d, g, and h.

Ms. Tchao asked for clarification on the discussions of items 10.10.A.1.d, e, & g, concerning noise, vehicular traffic and foot traffic. Mr. Kling summarized that at a minimum there would need to be more restrictions than addressed in the Application. Mr. Kling added that some on the Board feel the impact is much more detrimental than could be easily addressed by imposing restrictions.

In discussing the question whether the Application can be deemed as functionally water dependent. A majority of the Board concurred the mill portion of the design is functionally water dependent but the attached building does not fit that definition.

The Planning Board took a brief recess.

The meeting reconvened at 9:41pm.

Mr. Kling announced Town Counsel will prepare a Findings of Fact reflecting the consensus of the Board on the issues discussed here tonight and the Board members will hold a vote on approval/denial of the Application at the next meeting.

Mr. Hathaway and Mr. Reid disagreed with the change in procedure to have the Findings prepared before a Board vote on the Application. Mr. Kling responded it would be more sensible and appropriate that the Findings reflect the Board's vote.

Mr. Hathaway asked if the Application were denied, what impact would there be for the Applicant to come back with a new Application. Both Ms. Tchao and Mr. Gilliam responded there is no time constraint on a new Application.

The Planning Board Chairman announced the Board would review the summary and Findings of Fact on this Application and vote on the project as a whole at the next Planning Board meeting on December 17th, 2014.

Adjournment: A motion was made to adjourn, it was seconded and the vote was unanimous.

Submitted by: Patricia Saunders, Planning Board Recording Secretary