

Kennebunkport Planning Board
July 22, 2015 ~ 7:00 PM
Kennebunkport Village Fire Station, 6 Elm Street

A special meeting of the Planning Board was held on Wednesday, July 22nd, 2015. 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, Thomas Boak

Others Present: Town Attorney Amy Tchao, Werner Gilliam Town Planner

Items:

1. 150401 Kennebunkport Conservation Trust / Sebago Technics, Authorized Agent – Site Plan Review – Continued Public Hearing – for approval to construct a Community/Museum/Education Center/Building (Mill) with associated site improvements consisting of refining parking lot, walkways, landscaping and site lighting. [8 Mill Lane, identified as Assessor's Tax Map 09, Block 01, Lot 12 in the Village Residential Zone.]

Mr. Kling welcomed everyone to this special meeting of the Kennebunkport Planning Board and introduced the Agenda item.

Mr. Kling acknowledged receipt of several items from abutters, members of the general public, supplemental information from the Applicant, and a letter from Town Counsel Amy Tchao. All information mentioned was received by the July 15th, 2015 deadline, Mr. Kling added.

Mr. Kling then announced the order of the meeting to be as follows:

1. Attorney Tchao will provide the Board with a summary of her memo focusing on the legal issues of the case.
2. The Applicant will discuss the supplemental information submitted to the Board by the July 15th deadline.
3. The Chairman will then open the Public Hearing to allow the public to speak with a focus on the new information submitted.
4. Once abutters and the general public have finished speaking, the Applicant will provide a final summary statement.
5. The Chairman will close the Public Hearing portion of the meeting and the Planning Board will begin their deliberations.

Mr. Kling added, at this point, the Board will ask the Applicant and the abutter's/opponent's counsel to prepare a draft Findings of Fact to assist the Board in their consideration along with the aid of Town Counsel. Keeping all of that in mind, Mr. Kling added, the Board has read all of the information submitted carefully and asked those speaking tonight to keep their comments brief and not repetitive.

Attorney Tchao addressed the Board to summarize the framework of the legal issues the Board may decide to consider. Ms. Tchao focused her presentation on items #2 and #6 of her memo submitted to the Board. To begin, Ms. Tchao told the Board they need to look at what the Applicant is asking them to do. The Applicant is asking the Board to approve or deny their Application based on the assumption the boathouse is a museum and the grist mill is an accessory building to the boathouse. On the question of whether the boathouse is a museum, Ms. Tchao suggested the Board look at how the boathouse has been used since its approvals in 2009-2011 when it was granted approval and permits were issued for construction of the boat ramp, dock, utilities and restrooms. Ms. Tchao also indicated she provides more detail on this subject in her memo.

The second question Ms. Tchao discussed was whether the grist mill can be an accessory structure to the boathouse. Ms. Tchao stated factually there is a definition of accessory structure [in the Land Use Ordinance] and encouraged the Planning Board to find facts to support or deny that. As a legal matter Ms. Tchao stated, the Board should interpret the Ordinance to allow an accessory structure to permitted uses in the underlying Village Residential Zone. If the Board agrees with that statement, Ms. Tchao explained, it is then possible, legally, since a museum use is a permitted use in the underlying Village Residential Zone that an accessory structure is allowed in the Resource Protection Zone, but not a principle structure.

Mr. Kling thanked Attorney Tchao for her summary and guidance and asked if the board members had any questions for town counsel. The Board members had no questions at this time.

Mr. Kling asked the Applicant to summarize the supplemental information submitted since the last meeting.

Attorney Ralph Austin along with Attorney Durward Parkinson addressed the Board stating the information submitted was intended to be used during the rebuttal phase after the public has offered their testimonies and presentations. The items Mr. Austin highlighted in his summary to the Board are as follows:

- Tab #1 explains the changes/differences from this proposal to what was previously submitted.
- Tab #2 along with Tab #9 is background information on Kevin Durkin of Heritage Restoration along with a DVD attached to the submission
- Tab #4 is a letter from Stedman Seavey
- Tab #5 contains photos from 2008-2014 showing activities in the boathouse and its continued use as a museum
- Tab #6 is a listing of properties on Mill Lane to address the issue of property values of some of the abutters
- Tab #7 contains historical information on the use of the boathouse as a country store
- Tab #8 is plans discussed in prior memos including some architectural plans by Harvey Wells in 2009

- Tab #9 is the DVD previously mentioned.
- Mr. Austin concluded by stating the focus for tonight's meeting should be on the public's input.

Mr. Kling commented that the Applicant stated that events that might be held on the property would be limited to those events related to the boathouse and grist mill. Ms. Austin agreed adding there is a statement regarding that issue in the submitted materials as well.

Mr. Kling opened the Public Hearing and asked one of the representatives of the abutters to begin the proceedings.

Attorney John Bannon representing a group of abutters addressed the Board to respectfully submit some principles the Town Attorney has overlooked. Referring to Attorney Tchao's memo to the Planning Board dated July 15, 2015, Mr. Bannon agrees with the Town Attorney's statement that "the Board will need to weigh all of the evidence that is presented, including at the public hearing, and then make factual findings..."

Mr. Bannon expressed his disagreement with Town Counsel's opinion that there is already a legal museum use of the boathouse. Mr. Bannon's objection is based on the following two reasons:

1. The assumption the existing facts are undisputed when the facts are in question, and
2. Using certain facts, the Planning Board could not possibly conclude there is a legal museum in the boathouse which is above the Board's jurisdiction.

Mr. Bannon disagreed with the Board's jurisdiction on determining the legality of the boathouse and questioned whether the Town Attorney has viewed the videos of past Planning Board meetings. Ms. Tchao responded she did not review the videos of prior proceedings and clarified that she did not determine for the Board that the boathouse is a museum; adding it would be inappropriate for her to make that determination for the Board.

On January 6, 2010, Mr. Bannon stated, the Planning Board issued Findings of Fact with regards to the 2009 proceedings that state exactly what the Board decided based on those proceedings. Mr. Kling asked Mr. Bannon if he was suggesting that is the only piece of factual information the Board should consider. Mr. Bannon replied yes, adding the scope of the Planning Board's decision is only what is reflected in the Board's Findings of Facts and Conclusions.

Mr. Bannon concluded by questioning the Site Plan approval granted in 2010 includes a conditional use approval for the boathouse. Mr. Kling responded that when the Planning Board grants a Site Plan approval, there is no separate approval for a conditional use. Mr. Kling added that the Town Attorney is not trying to determine the facts for the Planning Board.

Mr. Kling asked if there were any abutters who would like to speak at this time.

Ms. Alison Daniels, of 4 West Street, addressed the Board to read a statement from the podium questioning the Trust's proposal is appropriate or permitted in any way.

Ms. Nina Perlmutter of 13 Locke Street next took the podium opposing the Application and read a prepared statement into the record from Roselyn Magneson of Georgetown, Maine.

Ms. Lora McGrath of 2 Oak Street addressed the Board with enlarged photos of the parking area on the Applicant's property. Ms. McGrath stated her opinion that the Trust does not regulate or monitor this property now and the situation will be worse if this Application is approved as it will draw in more traffic and people. Referring to one of the photos of 6 cars parked on the property, Mr. Kling asked how that affects the abutters and what is a tolerable threshold? Ms. McGrath responded that the parked cars affect the view of the property and that the threshold is zero in her opinion.

Mr. Pete Warren of 8 North Street addressed the Board stating the Trust does not enforce their own rules when it comes to parking. Mr. Kling asked what the impact was to abutters by having cars parked there while kayaking on the river. Mr. Warren replied the cars are blocking their visual access.

Citing several sections of Article 10.10 of the Land Use Ordinance, Mr. Warren expressed his concerns about the noise of the proposed mill including the noise from the air conditioning units and additional noise of the crowds the mill will draw. Mr. Warren also argued that the boathouse is allowed to exist because it is grandfathered under our Ordinance but it has no permitted use stating its function along with no documentation that the boathouse has ever been a museum. Mr. Warren concluded that any one of the issues he has discussed is grounds for denial of the Application and asked the Board to reject this development.

Ms. Kristen Kuehnle addressed the Board stating that parking has been a major problem along West Street and is very concerned about the impact this project will have on the entire neighborhood. Mr. Kling agreed that parking on West Street is an irritant to the neighborhood and suggested Ms. Kuehnle should perhaps inform the Board of Selectmen.

Mr. Peter Frink of 2 Locke Street addressed the Board in opposition of the Application and gave a summary of his memorandum submitted to the Board on July 21st, 2015.

Mr. Orin Frink of 13 Locke Street addressed the Board as an expert witness who spent his summers with Clem Clark in 1945-47 while the previous grist mill was working. Mr. Frink noted the noise of the mill when it was working would be loud enough where one would need to step outside the building in order to talk to one another. Mr. Frink also argued there is no signage, either on the property itself or on the

internet, stating that the boathouse is a museum; adding that the Kennebunkport Conservation Trust does not list the boathouse as a museum in their literature.

Mr. David James of 17 North Street addressed the Board stating as a neighbor he has concerns on the negative impact to the neighborhood and the potential for increased traffic to the area creating unsafe conditions.

Mr. Vernon Moore, an abutter, addressed the Board stating he finds the reaction from the Chairman of the Board to be disrespectful and argumentative. Mr. Kling responded that he believes he has been objective and will continue to do that going forward. Mr. Kling also explained that he was trying to obtain from some of the abutters the real and physical impact of the parking problem and not to be disrespectful in any way.

Ms. Nina Perlmutter of 13 Locke Street addressed the Board and gave a lengthy presentation on her academic and professional achievements as background for her expert testimony in several areas. Ms. Perlmutter stated several objections to the Application, some of which are as follows:

- The Planning Board's ruling that letters regarding the 2014 Application cannot be included with the 2015 Application
- It is improper for the Town Attorney not to review all of the facts herself (referring to the videos of the prior meetings)
- The boathouse has never been a museum and has never been connected to the mill site
- The Board cannot define the boathouse as a museum as there are no facts in evidence that show it is a museum
- If the Board approves this Application they will be extending the business district into a residential district.

Other areas of concern, Ms. Perlmutter discussed were: dust and the potential for explosions in a tightly packed residential area; the effect of a dam in an intertidal zone on the wildlife and especially the organisms that support the wildlife; and the detriment to property values as the neighborhood contains two of the oldest houses in Kennebunkport.

Ms. Perlmutter concluded her presentation by reading a quote from Art Buchwald: "We seem to be going through a period of nostalgia and everyone seems to think yesterday was better than today. I don't think it was and I would advise you not to wait 10 years before admitting today was great. If you're hung up on nostalgia, pretend today is yesterday and just go out and have one hell of a time".

Ms. Kling invited any other members of the public to address the Board.

Mr. Brandon Gillard addressed the Board in support of the Application and pointed out that the cars in one of the pictures shown earlier are of the people's cars who are opposed to this project. Mr. Gillard added that "to infer there is a parking problem and to use your own cars is dishonest". Mr. Gillard concluded his statement by thanking the Trust for all of the work they do for the town and specifically for the children of Kennebunkport Consolidated School who have enjoyed many field trips to the mill site and the boathouse.

Ms. Susan Graham addressed the Board stating she endorses all complaints heard tonight and in written submissions to the Planning Board regarding parking and the lack of evidence that the boathouse is a museum. Although the community owes a debt to the Kennebunkport Conservation Trust, Ms. Graham acknowledged this endeavor is not one of those for which she feels is in the best interest of the town. As an explanation for the comments made earlier about the parking, Ms. Graham stated the cars were placed there to simulate the approximate location of where vehicles will park according to the Applicant's plan.

Mr. Russ Grady addressed the Board in support of the Application stating there are parking problems all over the town not just on Mill Lane and West Street. Mr. Grady added he believes the Trust has been wonderful to the town and would love to live next to this property.

Mr. Gordon Ayer addressed the Board acknowledging he has been involved in many Trust activities including the original purchase of this mill property. Mr. Ayer stated when the Trust first purchased the property; the Trust said the land would always be a pocket park with access to the water for the residents to enjoy. Mr. Ayer added that the issue of the boathouse being a museum has never been dealt with by this board and the reason for that is no one has ever made a presentation to the town stating the boathouse is a museum.

There were no further comments from abutters or the general public.

Due to the late hour, Mr. Kling suggested the Public Hearing be continued to the next meeting specifically to allow the Applicant to present their rebuttal and final statement. Mr. Kling added that with all of the information and points of opinion presented tonight, the Board has a good grasp of the issues and the Application.

Mr. Reid made a motion to continue the Public Hearing to the next Planning Board meeting on August 5th, 2015 for the purposes of the Applicant to present their rebuttal and final statement. Mr. Kling clarified the Applicant will present their final statement at the next Planning Board meeting on August 5th, 2015 and both the Applicant, Attorney Bannon and Town Counsel will prepare a draft Findings of Fact subsequent to that meeting but will need to be submitted to the Board no later than August 12th, 2015. Mr. Fellenz seconded Mr. Reid's motion and the vote was unanimous.

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

Submitted by: Patricia Saunders, Planning Board Recording Secretary