

**Kennebunkport Planning Board  
October 15th, 2014 ~ 7:00 PM  
Village Fire Station, 32 North Street**

A regular meeting of the Planning Board was held on Wednesday, October 15th, 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, Thomas Boak, Ray Hilwig  
Mr. Hilwig will have voting privileges for this meeting.

Approval of Minutes: Mr. Fellenz made a motion to approve the minutes from the October 1st, 2014 Planning Board meeting. Mr. Hathaway seconded the motion and the vote was unanimous.

Items:

1. **140802 Earth Restaurant, Hidden Pond II / Sebago Technics, Authorized Agent** – Site Plan Review – **Findings of Fact** – for approval to increase the kitchen and food prep area at the Earth Restaurant by 412 square feet, relocate two sheds and do some minor site work. This project was previously approved by the Planning Board on March 20, 2013, however no permits were obtained and the approval has expired. [354 Goose Rocks Road, identified as Assessors Tax Map 38, Block 001, Lot 08 in the Free Enterprise Zone.] *David Kling, Case Manager*

Mr. Fellenz read the Findings of Fact into the record. Mr. Fellenz made a motion to approve said Findings. Mr. Hathaway seconded the motion and the vote was unanimous.

2. **140803 Anne Barnes and Patrick & Lesley Brophy / Walsh Engineering, Authorized Agent** – Site Plan Approval – **Findings of Fact** – for approval to reconstruct and expand a non-conforming family dwelling. [87 Ocean Avenue, identified as Assessor's Tax Map 08, Block 001, Lot 17 in the Village Residential Zone.] *Helen Conaty, Case Manager*

Mr. Kling read the Findings of Fact into the record. Mr. Hathaway made a motion to approve said Findings. Mr. Hilwig seconded the motion and the vote was unanimous. Mr. Reid was recused from this Application and thus did not vote on approval of the Findings.

3. **140801 Kennebunkport Conservation Trust / Sebago Technics, Authorized Agent** – Site Plan Review – **Public Hearing** – 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 Agenda item and reminded the Applicant and the audience members in attendance it is the Planning Board's policy to receive any information, correspondence, etc. at least 7 days prior to the next Board meeting. Having said that, Mr. Kling stated he has not had the opportunity to read all of the correspondences that have been submitted, especially those letters submitted within the last few days of this meeting. Mr. Kling suggested the Planning Board defer any deliberations and decisions until the next meeting on November 5<sup>th</sup> to ensure all Board members have the opportunity to review the information submitted. Mr. Kling also asked if there were to be any new information or letters submitted to the Planning Board for this Application it should be done so before October 25<sup>th</sup> in order for the Board members to have sufficient time to review before the November 5<sup>th</sup> meeting.

Mr. Hathaway asked if the Public Hearing was still to be held. Mr. Kling explained the Public Hearing would be held tonight adding it is the duty of the Planning Board to make an objective decision whether or not the Application meets the standards of the Land Use Ordinance, specifically Article 10.10 and asked those in attendance tonight to keep their comments specifically related to factual matters related to the Application and the Land Use Ordinance.

Attorney Amy Tchao introduced herself to the Applicant and the audience in attendance and asked that the list of correspondence received be included in the minutes for this meeting. (*See Attachment*)

Before opening the Public Hearing, Mr. Kling asked the Board for their opinion on Attorney John Bannon's request to have the Applicant's prior Application of 2013 be incorporated as part of the record with this current Application. Mr. Reid offered his opinion that this Application should be taken on its own merit. Mr. Werner Gilliam, Town Planner, informed the Board the 2013 Application was withdrawn and has since expired so it is deemed inactive and not part of this current Application. Attorney Ralph Austin, representing the Kennebunkport Conservation Trust added there is no factual information from the previous Application that they would wish to have included in this Site Plan Review.

Attorney John Bannon addressed the Board stating if the Board is not inclined to accept a general inclusion of the past Application for this proceeding, he wishes to have his letter to the Town's Attorney, Amy Tchao included in the Board's correspondence for this Review. Mr. Kling acknowledged receipt of Mr. Bannon's letter as part of the materials submitted on behalf of his clients.

Mr. Kling asked the Applicant to provide a short summary of the project and acknowledged receipt of the following letters:

- Letters from Allan Muir as Kennebunkport Fire Chief and Superintendent of the Kennebunkport Sewer Department

- Letter from Pierce Atwood Law Firm addressing concerns about the management of flood issues

Attorney Darwood Parkinson representing the Kennebunkport Conservation Trust addressed the Board and provided each member with a folder of their previous PowerPoint presentation along with copies of several letters supporting the project from local businesses and community members. Mr. Parkinson noted the Trust has and will continue to work with the property's immediate abutters, Priscilla White and Tim Coon who are represented here by their Attorney Matt Manahan. While providing a brief list of some of the activities that may occur on the property, Mr. Parkinson gave a brief overview of the workings of the grist mill and functions and displays that would be held at the River Heritage Educational Center.

Mr. Steve Doe addressed the Board to explain with the change in the DEP's rules on calculating impervious surfaces, the 13 parking spaces will be grass pavers marked with granite cobble and the handicapped space and traffic circle will be paved. In response to previous comments from the Board and Sewer Supt. Allan Muir, there will be a 4 ft. tall plant buffer to the Lombard property along with buffer plantings along the side closer to the property line but not directly over the sewer line.

Mr. Reid asked what the vegetative buffer consisted of and suggested changing the plantings from deciduous trees to evergreen trees. Mr. Doe responded the River Heritage Education Center (RHEC) would only be open from April to October but would be happy to change the plantings to all evergreens.

To accommodate the Sewer Department's access to the pump station, Mr. Doe explained they will put down 2 inches of loam to provide a base for the trucks to drive on.

In addressing the Fire Department's concerns, Mr. Doe illustrated on enlarged maps where the two fire lanes would be, one to access the building with the connection point located in the front corner of the building and a second lane to access the boathouse.

Mr. Kling asked if they have made an agreement addressing the flood management issue for #2 and #4 Mill Lane. Mr. Doe replied they did have a flood study done showing the height of the damp and their engineer was comfortable with the plan.

At Mr. Kling's request, Mr. Doe gave a quick review of how a school bus or trolley would enter and exit the property.

Mr. Reid asked if the fire lane would be kept clear in the wintertime. Mr. Doe responded the fire lanes to the building and boathouse would be plowed in the winter.

Mr. Kling asked the Applicant to address the legal issues before opening the Public Hearing.

In reference to a letter from Attorney Tchao, Attorney Austin summarized his client's position as follows:

1. The RHEC is not a museum and because of this it is allowed in the Resource Protection zone.
2. The flour or cornmeal produced from the workings of the mill is incidental to the primary purpose.
3. The entire structure is one working complex (i.e. grist mill, storage of grains for grinding, packaging materials, ground flour, etc.) that is functionally water dependent.
4. Under this proposal there are not two principle structures as the boathouse would become an accessory structure to the primary structure of the RHEC.

Mr. Kling asked Mr. Austin to discuss the difference between Articles 4.15.B.3 and 4.15.B.4. Mr. Austin replied that one interpretation is no principle structures are allowed in the Resource Protection zone. Another view is if a use is allowed in the underlying zone, in this instance the Village Residential zone, then it is allowed in the Resource Protection zone which is an overlapping zone. Mr. Kling inferred that the Applicant's position is if the permitted use in the Resource Protection zone is supplemental.

Mr. Kling opened the Public Hearing with the admonishment to discuss only those issues germane to the Application's relevance to the Land Use Ordinance.

Mr. John Bannon, Attorney representing 33 property owners, either direct abutters or in the immediate vicinity, addressed the Board to give a lengthy summary of his clients opposition to this Application. Mr. Bannon cited the following sections of the Land Use Ordinance that he believes the Application does not meet:

- Art. 10.10.B.1.e which states the Application... "Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;"
- Art. 10.10.B.1.f which states the Application..."Will protect archaeological and historic resources as designated in the comprehensive plan;"

Mr. Bannon provided the Board members and Applicants with copies of photos taken of the property arguing the views currently enjoyed will be obstructed if the RHEC is built.

Mr. Bannon also argued that the grist mill has become an accessory use to the River Heritage Education Center and as such is not a functionally water-dependent use and should not be allowed within the 75 foot setback line. Other points of argument raised by Mr. Bannon are:

1. The renting of a museum for a function is a commercial use which is not allowed in the ordinance
2. This project is an industrial use which is not permitted in the zone.

Mr. Austin addressed some of the items raised by Mr. Bannon stating there was an archeological dig conducted on the property which discovered an old turbine and beam from the original mill which will be preserved and displayed as part of the museum. Mr. Austin also stated there is no significant vegetation and this will not impact any points of access to the property and will provide an easement to the direct abutters so they will continue to have access.

Mr. Austin also stated the boathouse is a principal structure but there is nothing in the law that prohibits them from changing the use of a structure. Mr. Austin also added it is up to town counsel to decide which interpretation of Articles 4.15.B.3 & 4.15.B.4 makes sense.

Mr. Kling asked Attorney Tchao for her thoughts on the issues discussed so far. Ms. Tchao state the Board needs to make a determination if this Application meets the definition of a non-residential facility for scientific, education purposes, which is not defined in the ordinance and if it does, then is the boathouse an accessory to the RHEC. The Board also needs to determine if this is a prohibited industrial or commercial use or are those incidental to the primary use and if the primary purpose is a functionally water dependent use.

Mr. Kling asked Ms. Tchao about Articles 10.10.B.1.e and 10.10.B.1.f that were raised by Mr. Bannon. Ms. Tchao responded those are 2 standards the Board will need to address as well. Mr. Gilliam explained that in a retyping of the Land Use Ordinance in 2008, Art. 10.10.B.1.e was inadvertently omitted. Mr. Gilliam added the Board will be provided copies of those articles.

With the Public Hearing still open, Mr. Kling asked if there were any questions or comments from abutters. Mr. Jim Tardiff of 8 West Street addressed the Board asking if this building plan is the original layout of the mill from 100 years ago. Mr. Austin asked if he could respond to Mr. Tardiff at the continued Public Hearing at the next meeting.

Attorney Matt Manahan, representing Priscilla White and Tim Coon, abutters, addressed the Board stating his clients take no position on the Application itself but ask that the conditions agreed upon with the Conservation Trust be included in any decision the Planning Board renders.

Ms. Allison Daniels, of 4 West Street, addressed the Board to read a letter on behalf of Joyce Butler to be included as part of the record for this Application.

Mr. Peter Frink addressed the Board to ask Mr. Doe if the photo showing the street view of the property with the mill constructed is accurately produced by an architect or is it a historical representation. Mr. Doe responded he would research the answer to that question and respond at the next meeting.

Mr. Paul Cooper, of 3 West Street, asked if any educators have been consulted on a curriculum of the building. Mr. Tom Bradbury replied they have an education section of the Trust directed by Ms. Leia Lowry who will certainly be part of the full mission of the center once it is operational.

Ms. Jennifer Stuart, abutter to the property, expressed her concerns for the effects on the neighborhood if the Application is approved adding the majority of her neighbors are strongly opposed to this project.

Due to the late hour, Mr. Fellenz made a motion to continue the Public Hearing until the next Planning Board meeting on November 5<sup>th</sup>, 2014. Mr. Hilwig seconded the motion. The motion passed with a vote of 4 in favor of the motion. Mr. Hathaway abstained from voting.

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

**Submitted by:** Patricia Saunders, Planning Board Recording Secretary

**Attachments:** Correspondence List

**Correspondence received for Kennebunkport Conservation Trust / River Heritage Educational Center since October  
1<sup>st</sup> Planning Board meeting.**

10/02/14 Email from Susan Graham – Joyce Butler email  
10/06/14 Email & letter from Susan Graham  
10/07/14 Letter from Susan Graham  
10/07/14 Letter from C. Evan Stewart  
10/08/14 Letter from Mrs. Donald Norman  
10/08/14 Email & letter from Matt Manahan, Esq.  
10/08/14 Letter from Gillet Page  
10/08/14 Email & letter from Amy Tchao, Esq.

Received after 7 day filing requirement:

10/09/14 Letter from Lora McGrath  
10/09/14 Email & letter from Pete Warren  
10/10/14 Letter from Margaret Lescure  
10/10/14 Letter from Steve Doe (directly mailed to all parties as well)  
10/10/14 Letter from Susan Graesser  
10/10/14 Email & letter from John Bannon  
10/10/14 Email from Ralph Austin with attached emails with Amy Tchao & John Bannon  
10/10/14 Letter from Pierce Atwood (may be duplicate to email received)  
10/10/14 Email & letter from Ralph Austin  
10/14/14 Letter from Sandra Boardman  
10/14/14 Email from KCT (sent 10/10/14 @ 5:56 pm) with following letters attached:  
    Sally Bates  
    David Cluff  
    Bev Davis & Rick Litchfield  
    Kathy Cmylo  
    Deb Lennon & Tim Harrington  
    Beverly & Jon Bangs  
    Bud Warren  
    David Jourdain  
    Karl Pepin  
    Leia Lowery  
    Bob King  
    Jennifer Carolyn King  
    Bill Matthews  
    Marcia Matthews  
    Carol Banta Martin Walker  
    Sharon Cummins  
10/14/14 Duplicate sharing of Joyce Butler email from Cynthia & Leo Daley  
10/14/14 Email & letter from Alyson Daniels  
10/14/14 Email & letter from Phyllis Levesque  
10/14/14 Email & letter from Janet Henry & Vernon Moore  
10/14/14 Email & letter from Susan Graham

10/15/2014 – List prepared & distributed by Lisa Harmon