

Town of Searsmont
Planning Board Meeting Minutes
May 21, 2024
6:30 PM

1. Call to order: The meeting of the Planning Board convened at 6:32 pm. These minutes are a summary of the Board's discussions. A recording of this meeting is available at the Town office.

2. Roll Call - Members Present:

Christian Halsted, Chair
Sarah Crosby
Evie deFrees
John Lightner, Vice Chair
Jack DeGraff
Jon Thurston
Jon Robbins

Others:

Kenneth Cox & Gale Gary-Cox

Patricia Chapman, Clerk (on Teams)

3. Applications:

a. The Rage Release project on the New England Road:

i. C. Halsted consulted with MCOG and A. Philson about the tie vote from the last meeting:

1. The board should annually adopt a process such as Robert's Rules of Order which would cover most all meeting processes including voting.
2. In lieu of that having an official process, they recommend the board close the process and make a decision tonight on how to proceed:
 - a. We can have additional discussions and take another vote to try to resolve the tie or
 - b. Consider it a failed vote and close the process and write up a Finding of Facts. Any decision can be appealed.
3. A tie vote is considered a failed vote.
4. There are references in the MMA manual that indicate that the chair should not be voting regularly. They should reserve their vote for tie-breaking. It's not unlawful for the chair to vote, just a recommendation.
5. MMA manual also indicates that Findings of Facts should be done for all Site Plan Reviews but we have only done them for subdivisions (at least in recent years). Finding of Facts requires a vote on every standard.
6. In an appeal situation, courts do not go back through meeting minutes, they rely on documents like the Finding of Facts to determine whether the decision was valid.
7. This project needed to be reviewed because it is a change of use from residential to commercial. That is allowed in the rural zone if it meets all the review standards which is the purpose of the Site Plan Review.
8. There are a lot of references to the purpose of the standards. They are a guide for reviewing but they are vague so it can be difficult to determine if a project meets the standard. We were focused on the noise piece for

- this project but there isn't enough detail in the ordinance to indicate this project doesn't meet the standard.
- a. It can't be denied because members don't feel the project is "appropriate for the area".
 - b. There is a reference to 60 decibels in the LUO but we don't have a good way to determine what the actual noise level will be outside the building.
9. One of the abutters that had expressed concerns but couldn't attend the last meeting, has since indicated that their concerns had been alleviated after talking to the applicants. [This is second hand information; they did not contact the board directly.]
10. J. Robbins was not in attendance at the last meeting but has read all of the minutes where this application has been discussed and reviewed all of the application documents. He feels that the application was complete and does appear to meet all of the standards but he would prefer to abstain from the vote. He personally is not in favor of the project but understands that is not a reason to vote no and he is not comfortable voting yes. He shares the concerns previously discussed about safety and noise, etc.
- ii. Application discussion:
1. Noise seems to be a primary concern.
 - a. There is some noise guidance in Section 608.C, page 18 of the LUO
["Noise levels shall not generate hourly sound levels resulting from routine operating in excess of 60 decibels as measured at the property lines."]
 - b. How can that be measured or enforced?
 - c. Can the noise limit of 60 decibels at the boundary of the property be included as a condition of approval? W. Wetmore can check-in at any time to confirm compliance for anything covered in the LUO even without a specific condition in the approval.
 - i. The CEO can follow up on noise complaints
 - ii. The project can be shut down if it gets too popular and people park on the street or otherwise interfere with traffic based on the existing standards in the ordinance.
 2. If the board votes to deny the application, we have to document how it is not meeting the standards.
 - a. We can do a Finding of Facts and vote on each standard and then a final vote on the whole project. [C. Halsted shared a copy of a Finding of Facts from a previous project as an example.]
 - b. Each item would indicate whether or not the project meets that standard and why.
 - c. Conditions would be included at the end of the document as part of the final decision.
 3. The Appeals Board does not necessarily re-open the application. They review everything the Planning Board provides and reviews their actions

- and either upholds or overturns the decision. They would rely on a Finding of Facts document and not meeting minute discussions.
4. When subdivisions are approved, everyone on the board signs the final plan. The Chair usually signs the Finding of Facts.
 5. Concerns & discussion about how we would justify not approving this application:
 - a. This is a change of use to a more intense use.
 - b. The floor plan was not complete and accurate when initially presented. There were conflicting notes about dimensions.
 - c. There are concerns about safety and whether the Fire Marshall should be weighing in on some of the details before the board approves this.
 - d. Several other pieces of information were changed each time they were discussed. How do we know what is actually going to happen? (i.e., hours and days of operation, traffic flow, etc)
 - e. Noise and hours of operation are a concern. [The board will add a discussion about noise ordinances to the list of future projects.]
 - f. This brings up the need to review the ordinance more closely and review what is allowed and not allowed in rural areas.
 - g. Some areas are very vague and make it difficult to determine whether a project meets the standards.
 - h. Under Section 103 Purpose:
 - i. Item C under the purposes of the Ordinances is “To promote the health, safety, and general welfare of the residents of the community;” And
 - ii. Item B is “To protect property rights and values by balancing the rights of landowners, to use their land with the corresponding rights of abutting and neighboring landowners, and to enjoy their property rights without undue disturbance from abutting or neighboring use;”
 - i. The review uses many subjective terms such as “unreasonable” and “adequate” – how do we define those?
 - i. Google searches can give examples of what constitutes 60 decibels but the ordinance differentiates between regular and intermittent noises. Chainsaws would be over 60 decibels but are usually intermittent vs this project that would have regular hours.
 - j. From the Manual for Local Planning Boards: A Legal Perspective: Chapter 2 The Decision-Making Process, page 46: Vague Ordinance Standards; Improper Delegation of Legislative Authority:
 - i. It is very important for an ordinance, especially a zoning ordinance, to include fairly specific standards of review if it requires the issuance of a permit or the approval of a plan. The standards must be something more than “as the Board deems to be in the best interests of the public” or “as the

Board deems necessary to protect the public health, safety and welfare.” *Cope v. Inhabitants of Town of Brunswick*, 464 A.2d 223 (Me.1983). It also is very important to have language in the ordinance instructing the board as to the action which the board must take. It is not enough merely to say that the board must “consider” or “evaluate” certain information. *Chandler v. Town of Pittsfield*, 496 A.2d 1058 (Me. 1985).

If an ordinance gives the board unlimited discretion in approving or denying an application, it creates two constitutional problems. It violates the applicant’s constitutional rights of equal protection and due process because (1) it does not give the applicant sufficient notice of what requirements he or she will have to meet and (2) it does not guarantee that every applicant will be subject to the same requirements. It amounts to substituting the board’s determination of what are desirable land use regulations for that of the legislative body (town meeting or town or city council), where it legally belongs. The courts call this an “improper delegation of legislative authority.” Legally, only the legislative body can adopt ordinances, unless a statute or charter gives that authority to some other local official or board.

6. C. Halsted voted against the project at the last meeting. He was also thinking about how this project fit into the neighborhood. After all his consulting, he has come to the conclusion that accepting the application as complete was a mistake.
 - a. All of the piece-meal information and changes made each time it was discussed, should have made the board vote it down as incomplete at the start.
 - b. Are the standards for an application too high? No, many other applications have been able to meet these standards and submit thorough applications.
 - c. With all of this information, especially the fact that it was accepted as complete, he would change his vote to an approval now. He believes a denial would likely be reversed if appealed.
 - d. We have a CEO now and the ability to follow through and enforce the standards in the LUO.
7. Some areas of the LUO are difficult for laymen to understand. Now that we have a new CEO who can help applicants, we should be able to hold applicants to the stated application standards.
8. Moving forward we need to be more consistent about holding applicants to the application standards in the LUO.
9. It is appropriate that Site Plans and Subdivisions have higher application standards than regular building permits.

10. Another abutter emailed the Chair with concerns about the project but the concerns expressed about the waste that will be created including potential hazardous waste from electronics. These concerns have been addressed in previous meetings.
 11. Should Site Plan Review standards be more aligned with other areas of the LUO – i.e., noise. The wording about noise in the review standards is more vague than in section 608. For this project, when approved, a condition could be made to keep the noise in a specified time frame (regular day time working hours).
 12. The guidance we received indicates we should try another vote but if people feel strongly, they should not feel pressured to change their vote. A tie vote that cannot be resolved counts as a failed vote and the project will not be approved.
 13. Two options for tonight:
 - a. Take another vote to see if we can break the tie.
 - b. Or accept the tie vote as a failed vote and the project is not approved. The applicants could either appeal or re-apply.
 14. The board will discuss adopting an official process (i.e., Robert's Rules of Order) moving forward.
- iii. J. DeGraff made a motion to take a second vote, seconded by C. Halsted. Motion passed, 4 in favor (C. Halsted, J. DeGraff, J. Thurston, J. Lightner), 2 opposed (S. Crosby, E. deFrees)
 - iv. New vote on the existing motion from the May 7th meeting [C. Halsted made a motion to accept the proposed plan, J. DeGraff seconded] – motion passed, 4 in favor (C. Halsted, J. DeGraff, J. Thurston, J. Lightner), 2 opposed (S. Crosby, E. deFrees)
[Per J. Robbins statements above, he is not participating in the voting related to the Rage Release project.]
 - v. It was made clear that this application was only approved tonight because the board did accept the application as complete at the last meeting. In the future, the board will be more careful about making the decision to accept an application as complete. They will require that applications are typed and include all of the necessary details up front vs adding in details during the review.
- b. MMA manual is electronic and available to all PB members.
 - c. The board needs to discuss implementing meeting process such as Robert's Rules of Order at the next meeting. We also need to discuss meeting minutes and the details that are or are not included.
 - d. The Selectmen are having similar discussions about their meetings and minutes.
 - e. Planning Board members feel pressure from all sides. They have to live in this town and are a part of the community. They don't want to alienate applicants or the rest of the community with their decisions. It is also difficult to have open discussions and make decisions with the applicants in the room listening and making comments as well as any neighbors that may come to support or argue against a decision.

- f. Abutter notifications are intended to inform neighbors about the process – when hearings and discussions are being heard, etc. - not necessarily to share the details of the project.
- g. If abutters do not attend hearings to express their opinions, we have to assume they do not have concerns.
- h. There are still concerns about how the project will actually move forward vs how it was presented and if/how standards will be enforced.
- i. The current CEO may not be comfortable with some areas of enforcement of the LUO. He is doing a lot of research and learning the standards. He is also working well with the chair of the Planning Board. The selectmen have expressed that they plan to get more involved in enforcement.
- j. We have previously discussed have a joint meeting with the board of appeals to go over changes to the LUO. It was done several years ago. Should we do it again?
- k. The PB has talked about having annual trainings on different topics they are interested in.

4. Approval of Minutes:

- a. J. DeGraff moved to accept the May 7 minutes as written (including changes made by email between meetings). S. Crosby seconded. Motion passed with 7 in favor, 0 opposed.

5. Treasurer's report: None.

6. Communications:

- a. There is work going on near Amy's cottage on the Walker Road. Map 11 Lot 14. Do we have a permit on file? There doesn't seem to be anything on the permit spreadsheet. C. Halsted will check with W. Wetmore and have him follow up.
- b. Has any work started on the project on the island? No one has been out there to view the site.

7. Committee Reports: None.

8. Old Business: None.

9. New Business: None.

10. Adjournment: J. DeGraff made a motion to adjourn, seconded by E. deFrees. Motion passed by a vote of 7 in favor, 0 opposed and the meeting was adjourned at 8:02 pm.

Respectfully submitted,
Patricia Chapman, Planning Board Clerk

J. DeGraff made a motion at the June 4 meeting to approve the May 21 minutes as written. E. deFrees seconded. Motion passed with 6 in favor, 0 opposed.