

## **Kennebunkport Planning Board**

**October 7th, 2020 ~ 6:00 PM**

**Virtual Meeting (Via Zoom)**

A meeting of the Planning Board was held on Wednesday, October 7th, 2020. The virtual meeting convened at 6:00 p.m. via Zoom.

Members Present: Mr. Tom Boak (Chair), Nina Pearlmuter, D. Scott Mahoney, Ed Francis, Larry Simmons, George Lichte, John Harcourt

Approval of Minutes: Ms. Pearlmuter made a motion to approve the minutes from the September 16<sup>th</sup>, 2020 Planning Board meeting. Mr. Boak seconded the motion, and the vote was unanimous.

### Items:

- 1. 200802 Kennebunkport Heritage Housing Trust 2 / Sebago Technics, Authorized Agent** – Final Subdivision Review – **Public Hearing** – for approval to create 4 lots consisting of 2 single family dwellings and 2 duplex units on a 4.47 acre parcel. (Main Street, Assessor's Tax Map 22, Block 9, Lot 21 in the Cape Porpoise West Zone.)

Mr. Boak introduced the Agenda item.

Mr. Steve Doe along with Ralph Austin and Pat Clancy addressed the Board. Mr. Doe stated they have made several supplemental submissions to the Board which are:

1. Letter from Patrick Briggs addressing the questions about the Trust and their operation
2. 2 lease documents
3. The Trust's costs which were sent out for peer review to Acorn Engineering and should have all questions resolved early next week.

In reading the lease agreement, Mr. Boak commented there was only mention of having a dog but no other animals. Mr. Boak also noted there was no mention of the septic system in the lease agreement and thought the Applicant agreed there would be a septic system for each dwelling unit and a shared leaching field for the duplex. Mr. Doe agreed with Mr. Boak's statement that each unit will have its own septic tank. Mr. Austin added each homeowner would be responsible for maintaining the septic and a shared expense for the leach field; all of which can be added to the lease agreement.

Mr. Boak also asked if the Maine Department of Transportation vacated the easement on the property. Mr. Austin explained the state has officially removed its highway designation from the former location of old Route 9 and the town's release of the easement will be handled by the Board of Selectmen at their meeting on October 22<sup>nd</sup> by exercising their authority to issue a Discontinuance By Abandonment after holding a Public Hearing. Mr. Boak added that at least 3 members of the Planning Board should attend that October 22<sup>nd</sup> Board of Selectmen's meeting. Mr. Austin agreed to provide all the appropriate paperwork to the Planning Board once the Board of Selectmen have completed the process.

Referring to the shared driveway on Lot 1, Mr. Boak asked if the person(s) in the second unit needed an easement to use the driveway. Mr. Austin replied they will make note of that agreement in the lease documents.

Mr. Boak also asked if the utilities are on poles or underground. Mr. Doe replied they are above ground.

Ms. Pearlmuter agreed with Mr. Boak's initial statement regarding the mention of only dogs in the lease documents and noted her disappointment there isn't more integration of environmental issues in the lease and asked if the Trust would consider having tagged trees on the property managed by the Shade Tree Committee. Mr. Doe replied he was not sure of the benefit of having tagged trees on the property. Mr. Clancy commented he is not familiar with the tagged tree process, but it is something the Trust can consider going forward. Mr. Clancy also noted they intend to spend time with the homeowners and have an ongoing process of the stewardship of the land. Mr. Gilliam further explained it is an important question whether its existing trees on the site as opposed to trees that are to be planted and think it's important for the Trust to understand the shade tree easements historically have been to recognize a partnership between the property owner and the town for maintenance of those trees as the town requires the easement in order to be able to maintain or expend Shade Tree Committee funds.

Mr. Mahoney asked if there is a Homeowners Association for this subdivision. Mr. Clancy replied no there is not.

Mr. Mahoney suggested there be a provision added to the lease agreement that the Trust would have the right of refusal for any tree cutting the homeowner would want to do on the lot.

Mr. Francis asked if the responsibility of the land lies with the homeowner in the instance of storm clean-up or downed trees. Mr. Austin responded yes, that would be the homeowner's responsibility.

Mr. Francis also asked who is responsible for clearing the snow on the driveways. Mr. Clancy replied they would work with the homeowners and separate costs among the upper 2 lots sharing the expense of plowing for their shared driveway and the lower 2 lots sharing the expense of plowing for the same.

Mr. Simmons asked about the rights of the homeowner to use the property as a VRBO or AirBnB and if that is addressed in the documentation. Mr. Clancy responded their view is that the homebuyer is the occupant and that the home is not to be used as a place for rental income. Mr. Austin recalled he believes there is a statement in the lease itself that talks about a 12-month occupancy. Mr. Boak commented if the owners wished to rent out a second bedroom, they would need to get permission from the Zoning Board of Appeals to do so.

Mr. Simmons also asked if there was any specific assessment of risk associated with this subdivision, such as financial risk, fire risk and roadway accident risk for properties located near Hwy 9. Mr. Clancy replied he was unsure of the type of risks Mr. Simmons is referring to but added the homeowners would be required to have insurance by their mortgage lender and that would cover most of those things.

Mr. Francis asked if the Trust would carry a small liability contract on minor things that might happen on the common land including the private way. Mr. Austin stated he will be talking to the Trust about it and suggest they probably should have a minimum liability insurance policy overall as they are the landowner.

Mr. Lichte asked if there will be a manager appointed or will the Trust act as the manager. Mr. Austin replied it is his understanding the Trust will act as the manager but will have a person or volunteer be the contact manager. Mr. Clancy added that in this early stage it would be the administrative committee that would be spearheading this so it would be the chair of that committee as the point in contact. If there is more housing done by the Trust there may be a permanent part-time or full-time person to assume those duties.

Mr. Boak opened the Public Hearing. There was no one in the audience in attendance that wished to address the Board.

Mr. Francis made a motion to continue the Public Hearing to the next Planning Board meeting on October 21<sup>st</sup>, 2020. Mr. Simmons seconded the motion, and the vote was unanimous.

2. **200803 Robert Williamson / Atlantic Environmental, LLC, Authorized Agent – Site Plan Review – Public Hearing** - for approval to do maintenance on the bulkhead, which is failing, by placing pressure treated timbers and a waler along the face of the existing wall. Riprap will also be installed. (47 Ocean Avenue, identified as Assessor's Tax Map 10, Block 1, Lot 7 in the Riverfront, Shoreland and Resource Protection Zones.)

Mr. Boak introduced the Agenda item.

Mr. Tim Forrester of Atlantic Environmental addressed the Board on behalf of Robert Williamson who owns the bulkhead that surrounds the Riverbank Condos and is looking to do some repair and maintenance to beef up the wall. Mr. Forrester add they will install pressure treated timbers and band the whole thing to the waler and put in riprap which is large angular block rock 18"-30" in diameter up against the wall.

Mr. Boak asked the Board members if they had any questions.

Mr. Francis asked why there were 2 deeds submitted with the Application: a warranty deed and a quit claim deed. Mr. Forrester admitted he had not looked at the deeds in a long time but typically when they submit deeds it is to show the Applicant has rights to the intertidal zone so he assumes the first deed is just a reference deed and the second deed has the actual language in it.

Mr. Francis asked what the size is of the timbers used for the waler and what they were pressure treated with. Mr. Forrester replied the waler timbers will be 10'x10" and explained there are 2 standards for pressure treated lumber that is commonly acquired; one is the commercial version you'd find at Home Depot and the 2<sup>nd</sup> is a marine grade. The marine grade is a heavier standard green color and the more dense pressure treated wood is for submerged items, and do not contain arsenic, Mr. Forrester added. Mr. Forrester also stated he does not know what the chemicals are used to treat the wood, but he would provide that information to the Board before the next meeting.

Citing a discrepancy within the Application, Mr. Francis asked what the correct width of the lot is, 189 feet or 190 feet. Mr. Forrester stated it is 189 feet.

Mr. Francis then asked a number of questions concerning the stabilization of the easement area at end of each construction day and if all of the work will be done during the daylight hours. Mr. Forrester explained areas that are to be disturbed including the lawn areas, which does not have a sprinkler system, will be reseeded, revegetated, and stabilized and the other areas will be returned to existing conditions. Mr. Forrester added all work will be done during daylight hours with the loudest noises being generated from dump trucks delivering piles of stone and the typical sounds of an excavator.

To address questions raised from a letter from the abutters, Mr. Forrester stated they are hoping to start work in January anticipating the project to take 3-4 weeks to complete and will return in the spring to reseed and will be happy trim back the bush growing over the bulkhead. Mr. Forrester also stated he does not anticipate any damage being done to the juniper bush in the front.

Mr. Mahoney asked what the estimated life is of the new bulkhead, questioning why wood is being used instead of granite. Mr. Forrester explained he is not an engineer but a wetland scientist and there is no reason based on the engineer's design this would not stand for 20 years from now.

Mr. Simmons asked if the Applicant was able to confirm whether the footing of the new stone bulkhead needed to be installed below the proposed 1-foot excavation depth. Mr. Forrester replied they did not do any borings but there is a mix of cobbled boulder outside of the wall

area as well as the crushed stone and none of their projects have ever had the rock disappear, compact, or go out of sight, so the proposed configuration has always worked for them in past projects.

Mr. Simmons then asked if the drawings were going to have an engineering stamp. Mr. Forrester replied he can have that done.

Mr. Simmons asked if the Applicant had added the actual numerical figures for the elevations on the drawings. Mr. Forrester responded he did do that and emailed the revised drawings to Ms. Harmon in the Code Enforcement Office.

Mr. Boak opened the Public Hearing. There were no questions from the viewing audience. Mr. Boak closed the Public Hearing.

Mr. Francis made a motion to approve the Application. Mr. Simmons seconded the motion, and the vote was unanimous.

Mr. Boak announced the Findings of Fact would be read at the next Planning Board meeting.

**3. 200901 Earth Restaurant / Sebago Technics, Authorized Agent - Site Plan Review - Initial Review** - for approval to change the use of the restaurant from seasonal use to year-round use. (356 Goose Rocks Road, Assessor's Tax Map 38, Block 1, Lot 8 and Map 37, Block 3, Lot 3 in the Free enterprise Zone.)

Mr. Boak introduced the Agenda item.

Mr. Steve Doe of Sebago Technics along with Attorney Ralph Austin, addressed the Board. Mr. Doe stated they are looking to convert or change the Earth Restaurant that is currently a seasonal use to year-round use. Mr. Doe explained the developer has noticed in the past 2 years that more people are staying in town throughout the year and is hoping to open the restaurant for year-round dining. When the restaurant was built it was seasonal and the water lines and sewer lines were installed shallow so to update it they would have to bury the lines deeper to prevent freezing, Mr. Doe added. Mr. Doe concluded that there is nothing prohibitive in the Ordinance from changing this to a year-round facility except for the utility lines needing to be dropped deeper.

Mr. Austin added it was a marketing decision made by the developer noticing more people were staying longer into January and are asking for only the restaurant to become year-round, not the cottages.

Mr. Francis asked for clarification why this Application needs to appear before the Planning Board if the restaurant is in the Free Enterprise Zone as a conditional use. Mr. Gilliam explained when you look back at previous Findings and previous Applications, it has always been identified as a seasonal use and it is merely because of the change in status that the developer placed upon themselves whenever this was presented to the Planning Board in the past. Mr. Gilliam also stated the restaurant is a conditional use in the Free Enterprise Zone and it is his understanding there are some elements on the site that are seasonal in nature but those were done at the choice of the property owner then. Mr. Francis asked if there was an implied condition that the restaurant is to be seasonal and it was approved as such. Mr. Gilliam replied there are Findings of Fact on file that specifically identify it as seasonal and was approved with the understanding that it was seasonal.

Ms. Pearlmuter pointed out the Application states this is a permitted use in the Free Enterprise Zone, but it is a conditional use and should be corrected in the documentation.

Mr. Harcourt questioned why the percentage of lot coverage by the structures will be increased if all they are doing to the property is burying and insulating the pipes. Mr. Doe replied that is an error, there is no increase in lot coverage.

Noting the multiple Findings of Fact and conditions contained in those regarding septic and wells, Mr. Harcourt asked if the Applicant has complied with those conditions and is there evidence of that compliance. Mr. Gilliam responded yes, they have complied with those conditions and he has received reports from Sweet & Associates who conducts the well testing for the abutters' wells.

Ms. Pearlmuter asked if any of those well reports indicate the amount of water running through those wells or septic systems and if the wells are changing. Mr. Gilliam explained it is his understanding the requirement to look at the wells are specific to Phase I of the development which is not this particular piece of Hidden Pond. What you typically see in those reports is the nitrate levels in the monitoring wells located on the other side of the septic systems which have remained below any standards of concern, Mr. Gilliam added.

Ms. Pearlmuter expressed her concern about the overall progress this project has gone through citing there are 9 different Findings of Fact where it seems they are increasing something and changing something that will increase the use and expects the Applicant to come back next year asking for the cottages to be converted to year-round dwellings. Ms. Pearlmuter cited the concerns of the many abutters to this development cautioning any increase of use could have detrimental effects on the neighbors' wells and septic systems.

Mr. Austin stated right now there are no plans for the cottages to become year-round adding it can not become a housing development because it was approved as a hotel/motel and would have to obtain Planning Board approval to change that.

Ms. Pearlmuter cautioned the Board needs to be cognizant this is a conditional use and consider how it fits into the neighborhood over time.

Mr. Boak asked the Applicant to speak about the issues raised in the letters sent to the Board regarding this project.

Mr. Doe acknowledged receipt of 2 letters from Mr. Ed Bassett and one letter from William Casey, all with primary concerns being the septic system. Mr. Doe explained the Earth Restaurant has its own septic system, it is not near any abutters, and there are no nitrate plumes that flow towards abutters. There are 2 leach fields out there and there is a person on staff that goes out weekly and switches the pump from one field to the other field, alternating the waste going to each field, Mr. Doe added. Mr. Doe further explained they are not increasing the use as they will have the same number of seats and there is one dedicated well that serves the restaurant with a 300-foot radius.

Mr. Boak acknowledged the other concern from abutters is about the parking. Mr. Doe responded the parking shouldn't change; employees park on the 2<sup>nd</sup> access road into the property and plan to have more rigorous plowing during the winter to accommodate patrons as well ensure emergency vehicle access.

Ms. Pearlmuter noted that the comments in Mr. Casey's letter on item #7 is not within the jurisdiction of the Planning Board and should be addressed by the Assessing Office.

Regarding the OxyPro 4500 septic system, Mr. Simmons suggested in order to maintain an active biological process they may need to add some heat tracing for the pipes not only to prevent freezing but also to maintain the required temperatures. Mr. Simmons also questioned if they alternate between 2 drain fields, one of them will have stagnant water when the other is active so they might need to add some heat loops in the drain fields to prevent those from freezing up as well. Mr. Doe acknowledged Mr. Simmons' suggestions and agreed to contact their septic company.

Mr. Simmons asked if they were going to make an additional snow storage area on the property. Mr. Doe replied they will have to be more careful about plowing and may need to get a machine in there to move the piles of snow.

Mr. Harcourt mentioned the pipes were originally buried shallow because of some ledge so will they have to blast to dig down 3-4 feet? Mr. Doe replied they have anticipated having to blast for some of those lines and will follow the town's blasting permit process.

Ms. Pearlmuter made a motion the Application is complete. Mr. Simmons seconded the motion, and the vote was unanimous.

Mr. Boak announced a Public Hearing would be held at the next Planning Board meeting on October 21<sup>st</sup>, 2020. Mr. Lichte was assigned as Case Manager for this Application.

Mr. Boak reminded the Board members that at least 3 Planning Board members need to attend the Board of Selectmen's meeting on October 22<sup>nd</sup> to discuss the changes to the tent ordinance.

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

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