

MEMBERS PRESENT

Steve Collins, Chair
Deb Brusini, Vice Chair
Cathy Pinkham
Doug Oakley-recused from Hotel
Dee Miller
Ken Gibbs

MEMBERS ABSENT

Diane Paul

STAFF PRESENT

Robert Baker, Code Enforcement
Brenda Day, Secretary

Item #1 Call to Order

Steve, Chair, called the meeting to order in the downstairs conference room at 6:00p.m. on May 22, 2019.

Item #2 The Pledge of Allegiance

Item #3 Appoint Alternate(s)

All regular members in attendance. No alternates appointed for voting.

Item #4 Approval of Minutes

none.

Item #5 Old Business-

Becca Jewett & Scott Hendricks

Ski Hot, Inc.

1 Mountain Rd. Map 12 Lot 18

Retail Ski and Paddle Shop

Review of Findings of Fact and Conclusion of Law

Motion-Deb moved to approve the Findings of Fact and Conclusion of Law as written. Second made by Cathy. Discussion of the motion. Hearing none. 5 approved 0 opposed.

Item #6 Public Hearing

Hotel Bridgton

Saunders Mills, LLC

12 Bacon St. Map 22 Lot 85, 86 70

Hotel

Presented by Michael E. Tadema-Wielandt, Terradyn Consultants, LLC

Continued from January 30, 2019

Steve said We have some procedural matters to cover which affect the hearing. The planning board receive two letters from attorney Lourie writing on behalf of some of the butters and the Save Kennard street group. In those letters Mr. Lourie laid out some procedural objections regarding the Bridgton hotel application review process. Attorney Bower representing the applicant also responded to Mr. Lourie's objection in writing. The planning board has copies of those letters as well. Thank both of you for your written statements. Mr. Lourie's objections were noted for the record and I will rule on them now before we reconvene the public hearing. First, Mr. Lourie requested the planning board treat the May 10th, 2019 submissions as request to amend the application and to deny those requests. Instead Mr. Lourie has asked the board to review the applicants previously submitted application materials at tonight's hearing. Or alternatively, for reasons I will explain shortly to simply adjourn the hearing. The Talented attorney has advised that it is in the planning boards discretion accept amendments or modifications to applications as well as to accept supplemental information from an applicant. It is not unusual for applicants to modify their proposals in response to public comments as part of the site plan review process. In this instance, the Planning Board has already agreed to accommodate the applicants request to file its May 10, supplements and modifications. I see no reason to overturn that decision now. So, I am denying Mr. Lourie's request to exclude the May 10th submissions from the record. Second, Mr. lourie contends that the May 10 submissions are untimely because any supplemental information must be filed at least 12 days before a public hearing is scheduled, and May 10 and May 22 should not be counted in that calculation. The town attorney has reviewed this issue and disagrees with Mr. Lori's analysis of how days are counted for purposes of scheduling a public hearing. I will also note that to my knowledge, this is the method the board is always used to calculate days. And in any event, it does not appear that Mr. lourie or his clients are injured by how the calculation was made. Clearly, he received notice of this hearing date and the town administrator emailed the supplemental filing down on May 10. So, he had a full 12 days to review the supplemental Finding. Third, Mr. Lourie requested the planning board hire an independent consultant to review the application materials. As the board knows the site plan review ordinance allows us to hire an independent consultant. If the board determines it necessary. The town attorney has advised that this is in the board's discretion. My ruling is that hiring a third-party consultant is not necessary at this time. If at any time the planning board feels that is become necessary to hire an independent consultant. The board members know how to make that motion. Finally, Mr. lourie makes a number of requests in his letter that call on the planning board substantive decision making of the application such as denying site plan approval for this project. I am not ruling on those matters because it's outside of the scope of my authority as chair. In sun I do not view any of the objections made by Mr. lourie as a reason for postponing or canceling the public hearing we have scheduled for tonight. Accordingly, we will proceed with the hearing.

Motion-Dee moved to take from the table Hotel Bridgton. Second made by Ken Gibbs. Discussion of the motion. Hearing none. 5 approved 0 opposed.

Mr. Oakley was recused from the table.

Conversation ensued between the Board, Public, Department Heads, and the Town Attorney.

Deb said Could you please clarify this whole thing about prior development and still being able to do that in spite of what that standard says? Because I do see that there's a small part of that lot was developed, and that was because of the road, and there is very small section of that gravel road within the 75-foot area. Can you try and help me with this?

Mike Morse, Shoreland Consultant said If you look at the land use this table one (1) and the shoreline zoning ordinance, and flip to page 16. This is the version that's online, that I printed off. There are two different sections that could be relevant. Line number 28 says filling an earth moving greater

than 10 cubic yards in a stream protection district says no, which means it's not allowed. All right, and this is again for a new use. There is no existing development, the lot is undeveloped. If we look at line item number 33. There's a separate provision that also addresses earthmoving. This is earth moving vegetation removal, or construction affecting more than 100 square feet of land area on any property parcel within any two-year period. CEO permit. Then the next line 34 talks about the same thing greater than 10,000 square feet, which I don't believe we're exceeding 10,000 square feet within the stream protection district. So, this would be also considered a CEO permit. I'd let Ms. Dixon speak to the legality of whether the planning board would have jurisdiction over this, where it's clearly addressing the CEO permit here rather than planning board designation. If we were to adopt the idea that we're going to go with this line 28, filling an earthmoving of greater than 10 cubic yards NO and accept some of the public input you've heard tonight, that it is simply prohibited, you can't do anything that I'm going to say well, let's flip back to the page before this page 15. Let's take a look at principal structures and uses line item 13a one and two family residential. The answer there is no as well. That is to say to apply the argument that has been presented tonight is to say that somebody that has a legally existing non-conforming structure, I was got the message, I'm not supposed to use the word grandfather, because that's not in the in the language. So let's talk about what legally existing non-conforming structure that's less that's within the stream protection district within 75 feet of the Stevens, Brook, they can no longer do anything with that they can't tear it down, they cannot rebuild it, they cannot expand it, they cannot probably not maintain it. I mean, flat out says no. So that's that our argument applies to new structures, there's a whole section in your ordinance in Section 12. That applies to non-conforming structures and uses. And that's what this boils down to. And this is the basis behind understanding why an existing developed area can still be maintained, its legally existing, non-conforming, it could not be allowed today. But because it exists, things can still happen with this. That's what it really boils down to here. So two things, One is if we're going to apply this principle that it is not allowed under the land use stable for a new use, then that's flawed simply because it's a legally existing non-conforming use that certainly they have legal rights to be able to go back in and maintain or modify within the terms of the ordinance that does not allow them if the closest point of this graded area or develop the area is, say 28 feet from the edge of the stream that does not give them any right to propose something that's cutting into the buffer further 26 feet from the stream 27 feet from the stream, there's no right to do that you cannot expand it make it more non-conforming, so they can maintain what they have. And that's what's being proposed here. And then the second thing to consider, I guess is the board would I'm going to look to Ms. Dixon or maybe Mark on this from a legal standpoint, if we really consider this appropriately underline under the land use table line number 33 where it's earthmoving vegetation removal or construction affecting more than 100 square feet of land to CEO permit. Rob Baker, the CEO would review this. Is that still planning board function or not? That's, I guess a question.

Mark Bower said as Mr. Morse just said this is certainly something that would be appropriate to pose as a question to the CEO and interpretation of the ordinances certainly, within his purview. I know he's not here tonight. But that is something that you may want to do, and it wouldn't involve it wouldn't involve getting a third-party technical review, you have an in-house person to do that.

Mr. Lourie said verification of an ordinance is a question of law and if you do not decide it correctly, the court may well overturn your decision. You have a lawyer here, there's no reason to go to the code enforcement officer for interpretation of this it's in the ordinance. It's clear in the ordinance, although a thick fog seemed to descend as it was explained to you. In fact, there is a significant difference between a lawful non-conforming use and a lawful non-conforming structure. The building is a lawful conforming structure. The use is a new use, which is what they're proposing. And all of this stuff is garbage that you've just heard a moment ago, there just spinning. In fact, the ordinance is clear and when the ordinance is clear, there's no room for interpretation beyond the clear language of the ordinance. Plain language controls are what the court say, in the first instance of plain language in, bars it right here. It's

very clear and it's only made ambiguous by the talk about what state law of permits or requires. It's very clear that the local ordinance controls they have to proceed to develop in accordance with the town ordinance, and it's up to this board, you cannot approve a plan, which violates the either the site plan ordinance or the Shore land protection or Stream protection ordinance. You can't do it and you can't shove this back to the code officer. It's here before you, you have to make a decision. You have to find that it's in conformity with the ordinances of a town and it's your decision and you with your own legal advice should make that decision. This is not rocket science. This is about that simple ordinance interpretation rules and stuff that they've given you is pure hogwash.

Vote: To hold deliberations on Wednesday May 29, 2019 at 1:30 p.m. Discussion of the motion. Hearing none. 5 approved 0 opposed.

Motion-Cathy move to close the Public Hearing. Second was made by Ken. Discussion of the motion. Hearing none. 5 approved 0 opposed.

Item #7 New Business

none

Item #8 Approved Applications as per Bridgton Site Plan Review Ordinance 4.A.1

none.

Item #9 Topics of Discussion

1. other

Item #10 Adjourn

Motion-To adjourn the meeting at 9:21 p.m. was moved by Ken and a 2nd by Cathy. Discussion of the motion. Hearing none. All in favor 5 to 0 to adjourn.