

Town of Islesboro
BOARD OF APPEALS
In re Appeals Regarding Losee Application (MD 01-24)
Findings of Fact and Decision of the Board of Appeals

PROCEDURAL HISTORY

David and Joan Losee (“Applicants”) own a parcel of land on Islesboro, Maine, consisting of approximately 50 acres. That land is a combination of three (3) parcels of land acquired over time by the Applicants. On December 16, 2024, the Islesboro Planning Board granted approval of the Applicants’ three (3) parcel subdivision, and the Planning Board adopted Findings of Fact which demonstrated that the Applicants satisfied all the Minor Subdivision requirements. *See* Record, pages 238-365. The Planning Board members voted 5 in favor, 0 opposing, on the Findings of Fact and the Permit (the “Decision”).

On January 16, 2025, Kara Masters Siekman (“Seikman”) filed 11 appeals of the Planning Board’s action approving the 3-lot subdivision.

On January 24, 2025, Thomas and Glenda Dexter (collectively “Dexters”) filed their appeals which included 13 grounds.

For the reasons set forth below, the Board of Appeals finds that the appeals of Siekman and the Dexters fail to demonstrate that the Planning Board Decision was contrary to the specific provisions of any Islesboro ordinance or contrary to the facts presented to the Planning Board, the Decision of the Planning Board is sustained, and the Siekman and Dexter appeals are denied.

I. STANDARD OF REVIEW

The Islesboro Board of Appeals Ordinance provides, in pertinent part, “The Board shall hear appeals from decisions of the Planning Board as set forth in § 15-10A...on an appellate basis...When acting in an appellate capacity, the Board may reverse the decision of the Planning Board only upon a finding that the decision was contrary to the specific provisions of the

ordinance or contrary to the facts presented to the Planning Board. Such appellate review is limited to the record of the proceedings before the Planning Board, and the Board shall not receive or consider any evidence that was not presented to the Planning Board, but the Board may receive and consider oral and written argument...For all matters before the Board, the person filing the appeal or request shall have the burden of proof.” Town of Islesboro, Me., Ordinance, Part I, Ch. 15, Art. I, § 15-7(G) (emphasis added).

II. FINDINGS: THE SIEKMAN APPEALS (11)

Siekman Appeal #1.

In her Appeal #1, Siekman claims that the 1985 action of the Planning Board which allowed a modification of the Sunset Acres subdivision plan to show the subdivision road passing through Lots 5 & 6 instead of along the property line of Lot 7 was improper. That 1985 action was not appealed and the time for an appeal has long past. The Board of Appeals finds that Siekman Appeal #1 fails to present any claim upon which relief can be granted.

Siekman Appeal #2.

In her Appeal #2, Siekman provides copies of postings that she may have placed somewhere in the Sunset Acres Subdivision. That posting evidence was not before the Planning Board, is not part of the Planning Board Record, and is not relevant to any issue that was properly before the Planning Board. The Board of Appeals finds that Siekman Appeal #2 fails to present any claim upon which relief can be granted by the Board of Appeals.

Siekman Appeal #3.

In her Appeal #3, Siekman asserts that the land under a section of Trim Lane which runs along her southern boundary is owned by her and not by the Applicants. The Applicants’ surveyor showed the ownership of Trim Lane on Applicants’ proposed subdivision plan. To the

extent that Siekman claims that the boundary shown on the Applicants' survey is incorrect, Siekman has the burden of proof to support her claims. She has introduced no such information into the record. As noted by the Planning Board's attorney, Natalie Burns, Esq: "... the applicant has submitted a survey of the subject property, as well as a deed. These things generally are considered to be sufficient to allow an application to proceed forward for review on the merits." *See* Record, page 25.

Siekman Appeal #3 fails to present any claim upon which relief can be granted by the Board of Appeals.

Siekman Appeal #4.

In her Appeal #4, Siekman asserts that the Applicants did not file a revision to the plan of proposed subdivision plan a week before the meeting at which the Board was to review it. The only change added to the plan of which Siekman complains was the addition of two notes requested by the Planning Board. Siekman said in her appeal #4 that she did not believe that the Planning Board's "administrative failures are grounds for dismissal." The Board of Appeals finds that the Planning Board's acceptance of the filing of the two notes was not contrary to the specific provisions of the ordinance or contrary to the facts presented to the Planning Board.

Siekman Appeal #5

In her appeal #5, Siekman seems to be claiming that if lines are drawn on a subdivision map, the owner of a lot can never acquire adjoining land. The Board of Appeals finds that Siekman's Appeal #5 does not demonstrate that the Planning Board's decision was contrary to the specific provisions of the ordinance or contrary to the facts presented to the Planning Board.

Siekman Appeal #6

In her appeal #6, Siekman alleges error because the Planning Board did not require the Applicants to show building locations and other details relevant only to the future construction of houses on the subdivision lots. The record confirms that the Applicants represented to the Planning Board that the Applicants were seeking approval only for the subdivision lot lines and that the Applicants were not seeking approval of any building sites with their application. Record, pages 3-5, 18. The Planning Board deferred decisions regarding building locations until the lot owners approach the Planning Board with plans to build. In the meantime, the Planning Board satisfied itself that each proposed lot met the criteria of “buildability” called for in the ordinance. Siekman fails to prove that the Planning Board’s actions in this regard were contrary to the specific provisions of the ordinance or contrary to the facts presented to the Planning Board

Siekman appeal #7

In her appeal #7, Siekman asserts that Trim Lane is a right of way, not a road. The record reflects that the Planning Board walked Trim Lane as part of its review of the subdivision application. Record 124. The Planning Board did not err in calling Trim Lane a private road. The Board of Appeals finds that Siekman’s appeal #7 fails to demonstrate that the Planning Board’s actions were contrary to specific provisions of the ordinance or contrary to the facts presented to the Planning Board.

Siekman appeal #8

In her appeal #8, Siekman asserts that the section of Trim Lane located along the south side of her property (Sunset Acres Lot 7) is not a road, but a right of way owned in part by her and in part by the Applicants. Trim Lane was walked by members of the Planning Board, and they satisfied themselves that it is a road. Further, the area of road about which Siekman is

concerned is not essential to any of the approved subdivision lots or to the subdivision itself.

Because the section of road in question in appeal #8 is not necessary for the subdivision or any of its lots, Siekman fails to state a claim upon which relief can be granted.

Siekman appeal #9

In her appeal #9, Siekman asks the Planning Board or Board of Appeals to “honor” the ownership of the road, Trim Lane, as it passes along Ms. Siekman’s southern boundary. Neither the Planning Board nor the Board of Appeals is authorized to adjudicate matters of title regarding Trim Lane. Further, the fee title to the road is not relevant to the Applicants’ subdivision approval. Siekman Appeal #9 fails to present any claim upon which relief can be granted by the Board of Appeals.

Siekman appeal #10

In her appeal #10, Siekman appeals “ownership of the proposed road”. The Applicants sufficiently demonstrated title, right and interest (“TRI”) in the roads that serve the subdivision, as described in more detail below. Siekman appeal #10 fails to present any claim upon which relief can be granted by the Board of Appeals.

Siekman appeal #11

In her appeal #11, Siekman again questions the 1985 action of the Planning Board approving the relocation of Trim Lane. The time for a challenge to that action has long since expired. Siekman appeal #11 fails to present any claim upon which relief can be granted by the Board of Appeals.

III. FINDINGS: THE DEXTERS’ APPEAL

The Dexters’ appeal lists 13 “grounds” on which they base their appeal. Each of the grounds presented by the Dexters fail to demonstrate that the Planning Board’s actions were

contrary to specific provisions of the ordinance or contrary to the facts presented to the Planning Board.

Ground #1

The Dexters claim to own a 100' portion of Trim Lane running from Marshall Cove Road in a southerly direction to the beginning of lot 5 of the Sunset Acres subdivision owned since 1985 by the applicants. At the Board of Appeals hearing, the Dexter's legal counsel referred to the 100' portion of Trim Lane as a "choke point" that prevents the Applicants from having the TRI needed to proceed with their subdivision.

Right of access to the Corby land was raised before the Planning Board. In response, the Applicants submitted extensive documentation showing rights of access through roads within Sunset Acres Subdivision to all the subdivision land. The Applicants correctly advised the Planning Board that "title, right, and interest" ("TRI") for standing to proceed before the Planning Board was satisfied by the submission of the Applicants' deeds and the easements in their chain of title. The Applicants were not required to litigate title issues before the Planning Board.

The Maine Law Court has stated that the requisite right, title, or interest in property to confer administrative standing before a municipal board was the "lawful power to use [the property], or control its use" in the manner sought through the municipal action. *Walsh v. City of Brewer*, 315 A.2d 200, 207 (Me. 1974) ("More concretely, the question is whether plaintiff had the kind of relationship to the [property] which the...ordinances recognized as *sufficiently germane to the scope of their regulation....*" (emphasis added)). In *Murray v. Inhabitants of the Town of Lincolnville*, the Law Court held that a person who has executed a contract for the purchase of property has a sufficient right, title, or interest in that property to seek municipal

approval for the development of the property. 462 A.2d 40, 41, 43 (Me. 1983); *Tomasino v. Town of Casco*, 2020 ME 96, ¶¶ 11-14, 237 A.3d 175.

The Applicants provided detailed evidence regarding the deeds that demonstrated Applicants' boundary and right of access to the subdivision lots. *See* Record, pages 26-52, 167-194. For instance, the Ellis, Randlett, and Grinell deed for lots #5 and 6 to the Applicants granted a right of way on the Camp Road to and from the West Shore (Town) Road. The Applicants also submitted a plan approved by the Planning Board showing the current 50" right of way. Record 33. The Applicants also submitted the deed of Alice Chayes to the Dexters which contained a right of way to the town road (Record Pages 40-41) and the deed from the Dexters to the Applicants which contains a right of way for all purposes to the town road (Record pages 46-47). Regarding the third conveyance, the Applicants submitted the Corby to Losee deed (Record, Page 51).

The record reflects that at the October 7, 2024, Planning Board meeting the Board's attorney, Kristin Collins, Esq., advised the Board that, even if there are potential ROW issues with the proposed lots: "The decision of the Planning Board is going to be defensible as long as you have evidence of Right, Title and Interest in front of you. There may be a dispute or a private issue, but the case law says that the Planning Board may not resolve that. All that matters to you, is do you have a document in hand that purports to give these rights. That seems to be the case here." Record, page 153.

Applicants originally submitted a 3-lot subdivision that excluded all the Corby land, acknowledging that the neighbors claimed a title/access issue regarding the Corby land. However, the Planning Board required the Applicants to amend their subdivision plan into a 4-lot subdivision which included the Corby land. When that change was met with opposition by the

neighbors, and at the suggestion of Islesboro's Town Attorney, the Applicants reverted to a 3-lot subdivision by combining Lots 3 and 4, as suggested by the Town Attorney. Record, page 211. The Planning Board record indicates that none of the parties challenged Lot 3's right to use Trim Lane and Marshall Cove Road, as Lot 3 had an express easement. Given that Lots 3 and 4 were combined, the resulting lot is benefitted by the express easement to pass over Trim Land and Marshall Cove Road.

The Board of Appeals finds that the Dexters failed to meet their burden of proof regarding their arguments that the Applicants failed to submit sufficient evidence of TRI.

The Dexters also claim that the Applicants' subdivision constitutes an "unlawful surcharge" over the Dexter 100' section of road. The Board of Appeals finds that the Dexters fail to meet their burden of proof regarding their claim that the Applicants' subdivision will result in an unlawful surcharge over the Dexter 100' section of road.

Ground #2

With their second ground of appeal, the Dexters object to the proposed ROW to the Jones lot (part of Corby) for the same reason as Ground #1. The Board of Appeals finds that the Dexters fail to meet their burden of proof on their claim that the Applicants lack TRI to proceed with their subdivision application with the Planning Board.

Ground #3

The Dexters claim that the road leading to their house and passing through Lot 3 is not a "Road" as defined by Chapter 45. The Applicants' subdivision plan is submitted as a "Minor Subdivision" pursuant to Article IX of the Islesboro Ordinances. The Applicants provided the Planning Board with all submissions required by Sections 45-48 of the Islesboro Ordinances and the Planning Board properly found that the Applicants' plans met the Minor Subdivision

requirements. The Planning Board walked the roads serving the subdivision and found those roads sufficient. The subdivision is served by long existing roads. The Applicants confirmed that they did not propose to build any new roads. Record, Page 77. The Board of Appeals finds that the Dexters failed to meet their burden of proof to demonstrate that the private roads serving the Applicant's subdivision are in violation of any Islesboro ordinance.

Ground #4

The Dexters claim that Lot 2 has no frontage on a road as required by the Islesboro Ordinances. The roads serving the subdivision were reviewed and properly accepted by the Planning Board as part of the minor subdivision. The Planning Board obtained the opinion from the Planning Board's attorney, Kristin Collins, Esq., that frontage standards for Lots 1, 2, and 3 were met with the Applicants' subdivision plan. Record, page 109. The Planning Board minutes from October 7, 2024, confirm that road frontage requirements are met for Lots 2 and 3 on Trim Lane. Record, page 151. The Board of Appeals finds that the Dexters fail to meet their burden of proof regarding their claim of a failure to meet road frontage requirements.

Ground #5

The Dexters claim that the Applicants' subdivision plan served to "modify" the Lot lines of the Sunset Acres Subdivision without the permission of the other owners of the Lots depicted on the Sunset Acres Subdivision plan. The Board of Appeals finds that the Applicants did not change the Sunset Acres Subdivision beyond depicting lots as the Planning Board suggested. The description of the lots affected only the Applicants' land. The lot lines of the Sunset Acres Subdivision remain of record. The fact that Lot 1 of the Applicants' subdivision contains lots 5 and 6 of the Sunset Acres Subdivision and some of the Applicants' land that is outside of the

Sunset Acres Subdivision does not cause an unlawful modification of the Sunset Acres Subdivision.

Ground #6

The Dexters claim monuments were not set at the corners nor boundaries. The record demonstrates at page 128 that the Planning Board and the Code Enforcement Officer visited the Applicants' site on September 3, 2024, and that: "All pins were found." The Board of Appeals finds that the Dexters fail to meet their burden of proof to demonstrate that the Applicant's surveyor, Donald Richards, set the monuments improperly.

Ground #7

The Dexters claim that because the intended use of the subdivision lots was residential, the Applicants had to show for each lot, setbacks, building envelopes, driveways, drainage, and how each subdivision lot would be developed. As the record demonstrates, the Applicants sought approval to divide their land, not to develop houses themselves. The Applicants did not seek approval for any activities that required them to meet requirements set out in Chapter 125. *See* Record Pages 3-5, 18. On December 16, 2024, the Planning Board voted "To amend the Finding of Fact Section 45-21 to the following evidence provided; No dwelling units are proposed at this time, so Finding is "Not Applicable." The Planning Board did not err by deferring review pursuant to Chapter 125 relating to new house construction to a later date when a lot owner proposes to build a house. The Board of Appeals finds that the Dexters failed to state a claim on which relief can be granted.

Ground #8

The Dexters claim that the Planning Board cannot approve the division of land into separate lots without requiring approval of a full plan of development under Chapter 125,

including “driveway locations, stormwater management, topography analysis and engineering”. However, the Dexters fail to meet their burden of proof to show that the Planning Board is prohibited from granting approval of a minor development with the condition that the Planning Board will review any future plans for building residential homes on the lots. The record at page 20 shows that the Planning Board with a 3-0 vote passed the following motion: “Application MD 01-24 meets the criteria of Minor Development, based on the fact that no impacts will occur at this time, but in the future when individual lots are sold and go before the Planning Board.” The Board of Appeals finds that the Dexters fail to demonstrate that the decision was contrary to the specific provisions of the ordinance or contrary to the facts presented to the Planning Board.

Ground #9

The Dexters claim that the Planning Board failed to make adequate findings of fact. The record at pages 238-242 provides sufficient findings of fact to support each finding regarding the Section 45-19 Criteria and Standards. In the instances where the Planning Board made findings of fact: “Not Applicable,” such findings were adequate given that the criteria were not applicable to this application.

Ground #10

The Dexters claim that the Planning Board should have required that the Applicants rebuild Trim Lane to meet the fire engine requirements. The record at page 124 demonstrates that the Planning Board held a site visit to evaluate roads and rights of way within the proposed subdivision. The record demonstrates that the Planning Board was satisfied with the fire engine turn-around that the Applicants provided. The Appeals Board finds that the Dexters fail to demonstrate that the Planning Board’s decision regarding the fire engine requirements was

contrary to the specific provisions of the ordinance or contrary to the facts presented to the Planning Board.

Ground #11

The Dexters claim that the Planning Board failed to require any analysis of financial and technical capacity. The Board of Appeals finds that the Planning Board appropriately waived these criteria, as the Applicants were not proposing to make any improvements or build any structures.

Ground #12

The Dexters claim that the Planning Board had no right to waive the fire hydrant and road construction guarantees. The Planning Board voted 5-0 on the following motion: "To waive conditions required in the Development Review Ordinance (DRO), Section 45-101 and Section 45-116 (fire hydrant, pond and road construction guarantee), for Application MD 01-24." Record p 228. The Board of Appeals finds that the Dexters fail to demonstrate that such waiver was in violation of the ordinance.

Ground #13

The Dexters claim the Planning Board erred by failing to require a performance bond for road improvements, even though no road improvements were proposed. The Planning Board walked the road serving the subdivision and required no additional road construction other than the fire engine turnaround. The Board of Appeals finds that the Dexters do not meet their burden of proof regarding their argument that the failure to require a performance bond under these circumstances was a violation of the ordinance.

BOARD DECISION

1. Based upon the above findings and the consideration of all evidence submitted to the Planning Board and oral and written argument submitted to this Board of Appeals, the Board of Appeals finds that appellant Kara Masters Siekman did not meet her burden of proof as to her arguments on appeal that the Planning Board's December 16, 2024, adopted Findings of Fact and Decision were contrary to the specific provisions of the ordinance or contrary to the facts presented to the Planning Board. The Planning Board's approval of the Applicants' three (3) parcel subdivision is sustained and affirmed.

2. Based upon the above findings and the consideration for all evidence submitted to the Planning Board and oral and written argument submitted to this Board, appellants Thomas and Glenda Dexter did not meet their burden of proof as to their arguments on appeal that the Planning Board's December 16, 2024 adopted Findings of Fact and Decision were contrary to the specific provisions of the ordinance or contrary to the facts presented to the Planning Board. The Planning Board's approval of the Applicants' three (3) parcel subdivision is sustained and affirmed.

3. This is a final decision of the Board of Appeals.

Dated April 22, 2025



Patrick O'Bannon, Chair

Vote: S Yes ____ No



Tom Tutor, Vice-Chair

Vote: X Yes ____ No



Jon Kerr

Vote: X Yes ____ No



Peter Willcox

Vote: ✓ Yes ____ No

Susan West
Susan West

Vote: ☒ Yes ☐ No