

APPROVED

4/10/26

Town of Islesboro
Board of Appeals
MD 01-24 Meeting
April 22, 2025, 5:30 PM
Town Office Meeting Room

MINUTES

Members Present: Patrick O'Bannon, Susan West, Peter Willcox, Ben Dove

Members Present via Zoom: Tom Tutor, Jon Kerr, Dylan Purington

Members Absent: None

Others Present: David & Joan Losee, Bill Schoppe, Terry Cowan, Todd Congdon

Others Present via Zoom: Attorney Patrick Lyons, Attorney David Perkins, Attorney Bill Kelly, Tom & Glenda Dexter, Attorney Kristin Collins, Pete Anderson, Tracey Lindelof, Laura Staines Giardino

1. Call the Meeting to Order

- Chair Patrick O'Bannon called the meeting to order at 5:30 PM, and a quorum was established.

2. Board Deliberation

- P. O'Bannon explained that this is a continuation of the Losee hearing. The Board of Appeals met on April 2nd and heard presentations from the applicant and appellants. The Board decided it needed more time to consider the evidence. This meeting is for the Board to deliberate, and no one else will be allowed to speak.
- S. West stated she read the proposed findings that were submitted by the parties, and §125.2 of the Ordinance. She asked Attorney Lyons, from his perspective, did the Planning Board adequately "anticipate and respond to the impacts of development in all areas." Even though there are no houses being built on those three lots, in terms of anticipation that there would be development at some point, would there be any legal objections to what the Planning Board came up with, with the language of §125.2?
- P. Lyons stated he doesn't want to put his finger on the scale. He's here to make sure the Board is following the proper rules, and cannot answer the question. The Board needs to come to its own conclusion. In this instance, look at the applicable language in the Ordinance regarding the Planning Board's discretion. It seems the question is, did the Planning Board have the ability to waive certain requirements because the proposal did not include development of structures. The Ordinance provides language as to when the Planning Board can waive certain requirements.
- S. West asked for clarification: because the Planning Board said that certain aspects don't apply as there is no building going on, that doesn't mean that when someone buys one of the lots and wants to build, those issues won't apply—they will now apply, correct?
- P. Lyons replied that he believes that was the intent of the Planning Board. They approved it just for the land division, but if someone wants to develop that lot, they have to satisfy any remaining provisions of the Ordinance that weren't addressed at the meeting last December.
- P. Lyons added that under §45, 124-127, it addresses the authority of the Planning Board to waive certain requirements.
- P. O'Bannon reminded everyone that the Board of Appeals is determining whether the Planning Board followed their ordinances in issuing their decision.

- P. Lyons added that the specific Ordinance for this is §15, appellate capacity. The Board may reverse the decision of the Planning Board only upon 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 proceeding for the Planning Board, and the Board shall not receive or consider any evidence that was not presented to the Planning Board.
- S. West asked about the Right of Way into the property, specifically for Lot 3. Is that something that could be revisited if someone wants to buy?
- P. Lyons replied that the case law that was provided by the applicant addresses this. The Planning Board attorney also advised the Planning Board on the Right, Title, and Interest (RTI) issue. The law says that you have to show a cognizable expectation that says you have access. Whether or not that is correct is not for the Planning Board to decide, because that's a legal issue. RTI is a threshold matter designed to keep out applications that should have no business being before the Board. Once an applicant shows RTI, if there is any dispute, it's a private dispute between property owners. P. Lyons doesn't believe the RTI issue would come back to the Planning Board.
- S. West asked to clarify that the Siekman dispute with Trim Lane is also a private issue.
- P. Lyons stated that this is his interpretation of the situation. P. O'Bannon added that boundary disputes are not our purview.
- S. West asked about the possibility of roads being built in the future.
- P. Lyons stated that the Ordinance has requirements for roads. If a road can be placed somewhere else on a property, that would potentially be a solution to any form of private dispute between landowners. If it deviates from any previous approval, they'd have to go back to the Planning Board. A legal dispute could result in having to go back to the Planning Board to update a plan, but that dispute is wholly separate, and the Town would not be involved until some kind of resolution happened.
- T. Tutor asked the Board to reference the proposed Findings of Fact and Conclusions submitted by Bill Kelly on behalf of Dexter. Page 4, item 10, references a legal opinion from Natalie Burns that seems to say that the Planning Board should ask the applicant to provide a legal opinion. Has the Planning Board satisfied this requirement?
- P. Lyons pointed to the Planning Board's decision. He noted that the Planning Board's attorney, Kristin Collins, advised the Planning Board that the RTI was satisfied. Rather than from the applicant, they got a legal opinion from their own counsel.
- P. O'Bannon asked how the Board should proceed. Go through each appeal and discuss each point?
- P. Lyons replied that if this matter is further appealed to Maine Superior Court, it will be the Planning Board's decision that's appealed, not the Board of Appeals decision. The pressure is off about how detailed the Board should get. The Board could generally discuss whether or not the appellants satisfied their burden to show that the Planning Board's findings were contrary to specific provisions of the Ordinance or to the facts presented, and then adopt any of the parties' proposed findings and conclusions.
- P. O'Bannon stated that it seems the threshold to all this is the RTI issue. Are the members of the Board satisfied that the Losees demonstrated they have RTI?
- P. Willcox nodded that he is satisfied.
- T. Tutor stated he is satisfied on that issue, and that seems to be the core about access and right-of-way. He sympathizes with the appellants that there are so many conflicting

documents, but that's not our issue to resolve. He stated he was trying to think about the technical steps of the process, and he can't find anything that says the Planning Board acted incorrectly.

- J. Kerr stated that after going over these documents, he agrees with the Planning Board. The Planning Board went on what they had. There were never any counter surveys or other contrary legal documents. He feels the Planning Board made the right decision and followed the Ordinance for specifically granting that subdivision based on the information presented. If something else comes along in terms of development, that's another set of things that the Planning Board will have to look at. But we're here just to look at this piece. He votes in support of the Planning Board.
- S. West stated she supports the Planning Board.
- P. O'Bannon stated he also supports the Planning Board. He feels RTI was demonstrated and the Planning Board followed the Ordinance correctly. The information that was presented to them supports the decisions they made.
- P. Lyons stated that the applicant provided the Board of Appeals with proposed Findings. The Board has had time to review those. Unless anyone from the Board disagrees with any specific portions, he advised that, if the Board votes to deny the appeals, to do so by adopting the Proposed Findings and Conclusions. He referred to the three paragraphs on Page 13. If those three paragraphs look good, he advised the Board to vote to adopt these Findings and Conclusions. That could be signed tonight.
- P. Lyons offered to edit the document to add S. West's name, or the Board could use a blue pen to make any changes and sign it.
- P. O'Bannon stated he has read the document and supports the findings.
- T. Tutor stated he also agrees with them. He would feel better if Patrick Lyons cleaned up the document instead of us marking it with a pen, then we could sign the final version.
- C. Reed stated she could print out the final version for everyone to sign. She added that the Planning Board decision date needs to be corrected to December 16.

The Board voted to adopt the Applicant's proposed Findings of Fact and Decision of the Board of Appeals. P. O'Bannon read the three paragraphs of the Board Decision aloud for the public record and for the Board to vote on:

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." **Roll Call: P. Willcox, yes; T. Tutor, yes; J. Kerr, yes; S. West, yes; P. O'Bannon, yes.**
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

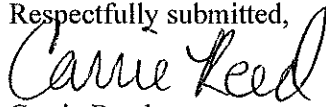
affirmed.” Roll Call: P. Willcox, yes; T. Tutor, yes; J. Kerr, yes; S. West, yes; P. O’Bannon, yes.

3. “This is a final decision of the Board of Appeals, dated April 22, 2025.” Roll Call: P. Willcox, yes; T. Tutor, yes; J. Kerr, yes; S. West, yes; P. O’Bannon, yes.

3. Adjourn

MOTION BY S. West, seconded by P. Willcox, to adjourn meeting at 6:09 PM. No discussion. Roll Call. Motion passed, 5 yes, 0 no.

Respectfully submitted,



Carrie Reed