

10/21/22

MINUTES

1. Call the meeting to order and Establishment of a Quorum

Chair Bill Schoppe called the meeting to order and a quorum was established at 5:00 PM.

Members Present: Chair Bill Schoppe, Vice-Chair Isabel Jackson, Jennifer West, Gil Rivera, Anne Bertulli as a voting member, and Trevor Blackford as an alternate (5:08).

Members Absent: Wendy Huntington Evans

Others Present: CEO Dave Dyer, Todd Congdon, David & Joan Losee, Terry Cowan, Janet Anderson, Murt Durkee, Kara Masters Siekman.

Others Present via Zoom: Maggy Willcox, Tom Dexter, Robyn Congdon, Tracey Lindelof, Kristin Collins, Lauren Bruce

2. Approval of Minutes of September 23, 2024, Regular Meeting.

Motion: To approve Minutes of September 23, 2024, as written, I. Jackson, seconded by G. Rivera. No discussion. Motion passed, 5 yes, 0 no, Unanimous.

3. OLD BUSINESS

Town Attorney, Kristin Collins, was expected to be on Zoom to answer Planning Board questions regarding Application MD 01-24, David & Joan Losee, Map 31, Lot 5E, to subdivide the lot into four parcels, as the first item of business. Since she was not present yet, B. Schoppe proposed to take the agenda out of order.

Motion: To take the Agenda out of order and move on to Land Use applications, B. Schoppe, seconded by G. Rivera. No discussion. Motion passed, 5 yes, 0 no, Unanimous.

A. Land Use Ordinance

1. Bill Tilden, Map 24, Lot 24, Application LU 46-24, to construct a log cabin on site of former trailer, using existing power, water, and septic.
 - Site Review done. The only question is septic capacity.
 - No septic report. D. Dyer stated the applicant hasn't been able to get Will Aldrich out to look at it yet. He recommended approval with a contingency that the septic is certified before any residence is occupied. D. Dyer will need to do a plumbing inspection.

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- There is a 1,000-gallon tank, and they found the four corners of the field. It was originally for a 2-bedroom trailer.

Motion: Application LU 46-24 is complete, contingent upon receiving septic analysis report, I. Jackson, seconded by J. West. No discussion. Motion passed, 5 yes, 0 no, Unanimous.

Motion: Public Hearing is not necessary for Application LU 46-24, I. Jackson, seconded by G. Rivera. No discussion. Motion passed, 5 yes, 0 no, Unanimous.

Kara Masters Siekman came in at this time and interrupted the vote by saying, "Nay." She asked if the package was complete and stated she couldn't hear Isabel's motion. B. Schoppe answered that Kara was late and that the Board was discussing Bill Tilden's application and not David Losee's application. C. Reed read back the Public Hearing motion, and B. Schoppe explained the first motion, stating Application is LU 46-24 complete with a contingency. Kara challenged the Planning Board by saying it's not complete. J. West stated Kara could not question the Board at this time. Kara accused the Planning Board of not looking out for abutters. G. Rivera answered that there are no abutters' concerns in this case.

Motion: To Approve Application LU 46-24, contingent upon adequate septic before occupancy, I. Jackson, seconded by G. Rivera. No discussion. Motion passed, 5 yes, 0 no, Unanimous.

2. Page Clason, Map 25, Lot 14A, Application LU 47-24, Change of Use, storage & office to residential, with related renovations to existing building.
 - Site Review done; all setbacks met. There's plenty of room. The measurements on the plan were a little off.
 - Regarding the question of differing setback requirements in Town Ordinance and State Code, D. Dyer couldn't find the discrepancy in the Town Ordinance. He stated the Town and State codes match. They are both 5'.

Motion: Application LU 47-24 is complete, I. Jackson, seconded by G. Rivera. No discussion. Motion passed, 5 yes, 0 no, Unanimous.

Motion: Public Hearing is not necessary for Application LU 47-24, I. Jackson, seconded by B. Schoppe. No discussion. Motion passed, 5 yes, 0 no, Unanimous.

Motion: To Approve Application LU 47-24, I. Jackson, seconded by G. Rivera. No discussion. Motion passed, 5 yes, 0 no, Unanimous.

Motion: To return to the order of the Agenda, B. Schoppe, seconded by I. Jackson. No discussion. Motion passed, 5 yes, 0 no, Unanimous.

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B. Development Review Ordinance

1. David & Joan Losee, Map 31, Lot 5E, Application MD 01-24, to subdivide the lot into four parcels.

- Town Attorney still not present.
- The Board could go through the Findings of Fact, but they would be subject to change, depending on the attorney's response.
- The Board referred to the attorney's written response of July 24th. J. West suggested going through this response again to see if it answers some questions. David Losee requested a copy of this response, which was provided.
- J. West noticed that in the memo, the shoreline frontage should be 200', not 150'.
- Road frontage requirements are met for Lots 2 and 3 on Trim Lane. Lot 4 does not have adequate frontage, so the right-of-way should be extended down as shown on the plan 150' into Lot 4 to provide sufficient frontage on Trim Lane, according to subdivision regulations.
- The attorney agrees that a 50' right-of-way is required, and the travelled road within the right-of-way must be sufficient for emergency purposes. Trim Lane was walked by Isabel, Bill, and Dave. B. Schoppe felt that a fire truck could get through.
- B. Schoppe asked Murt Durkee if he'd been on Trim Lane. Murt stated he'd have to look at it another time.
- J. West stated that the Board will require a cul-de-sac or hammerhead; the location needs to be approved by the fire chief. Discussion of possible locations.
- Kara Masters Siekman stated she had a question for Murt. Chair Schoppe advised her that this isn't the time for members of the public to speak in the meeting, as she hasn't been recognized by the Chair, but she could ask Murt after the meeting or outside the room. Kara continued to speak out of order, stating that her question was relevant to the topic of discussion.

Motion: To Table Application MD 01-24 until the attorney is present and able to answer any questions that the Board might have, B. Schoppe, seconded by G. Rivera. Discussion: J. West requested that audience members not participate in the Planning Board discussion.

Discussion about community participation at the appropriate time, during "People wishing to Address the Planning Board" item on the agenda. Motion passed, 5 yes, 0 no, Unanimous.

4. NEW BUSINESS

A. Land Use Ordinance

1. None.

B. Development Review Ordinance

1. None.

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5. OTHER BUSINESS

- CEO Report: None.
- People Wishing to Address the Planning Board:
 - Todd Congdon stated that the current Losee subdivision plan is not the same as was described to the abutters. He read from the abutters' letter. The retained land, now Lot 4, was originally described as not being part of the subdivision.
 - J. West stated that perhaps the attorney should see that letter.
 - Kara stated that not all the members of Sunset Acres have received letters or notification of the sequence of events. She feels that things have not been legally changed. Lawyers have different opinions on the same topic. There are boundary disputes. I. Jackson responded by reading the question the Planning Board wrote to the attorney regarding the boundary issue.
 - Discussion about the maps and designation of Lot 4.

Town Attorney Kristin Collins joined the meeting via Zoom at 5:31pm. She apologized for the delay and stated the Board could un-table Application MD 01-24.

Motion: To Un-Table Application MD 01-24 for attorney discussion, B. Schoppe, seconded by I. Jackson. No discussion. Motion passed, 5 yes, 0 no, Unanimous.

Attorney Collins replied to Planning Board questions from September 7th letter. *Answers in Italic.*

1. Can a subdivision occur within an existing 1968 (Sunset Acres) subdivision? What, if any restrictions of the older subdivision apply to the current subdivision?
 - *Yes, there can be a re-subdivision of a subdivision. If any lot created in that subdivision were then divided again twice, that would create a new subdivision. The conditions that were applicable to the prior subdivision may or may not need to be applied to the new subdivision. It depends on what the Ordinance says and the lay of the land, as of the date of the application. The Planning Board needs to look at whether circumstances have changed, and whether the original conditions make sense to apply to the new subdivision.*
 - I. Jackson asked if the new lots would still be considered Sunset Acre lots. *K. Collins stated that if there are private covenants attached to the parent lot, those covenants still should attach to any new lots created within that lot. For the purposes of private covenants or restrictions within the subdivision, those still apply, for Sunset Acres, but in terms of how the Town looks at it, it's a new subdivision.*
 - I. Jackson asked if they would still have access from Marshall Cove Rd. *K. Collins answered that if a parent lot has access from a right-of-way, that lot can be divided, and the resulting lots would still have rights of access. There is a point that if the lot is being divided into many lots, it may overburden the easement, and that might be a private issue between the property that's burdened by the easement and the property that benefits from the easement. If there are restrictions in the covenants against further*

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division or further burdening of the roads, that's something the Planning Board can look at, because that is a practical impediment to access. But that doesn't seem to be the case here.

2. Sunset Acres originally showed Trim Lane paralleling the western boundary of the Siekman lot. In January 1985 the Islesboro Planning Board approved the change in the location of Trim Lane to the current location, making the paper road Trim Lane obsolete.
3. The surveyed plan provided by the applicant shows the east property line of proposed Lot 1 extending along the western property line of Siekman. Siekman claims she should own to the centerline of paper road Trim Lane, which paralleled her western boundary. How should the PB handle this issue? Can we approve the plan with this issue and rely on the surveyor's review that the correct line is as shown?
 - *K. Collins disagrees that the westerly property line of Siekman would be relocated by the fact that the Planning Board relocated Trim Lane. The location of that boundary is dependent on where the boundary was intended and where it was physically located at the time of the transfer, the time of that deed. But this is a private issue between the two landowners. The Planning Board is free to rely on the deed and how a surveyor presents the issue if you think that information is all relevant and doesn't show this applicant doesn't have the property in question.*
4. The applicant has provided deeds showing that he owns the ROW on Lot 1, which has access to the adjacent Marshall Cove Road (private) to the public Meadow Pond Road.
 - a. Is it sufficient for the PB to approve a subdivision when there are potential ROW issues with the proposed lots?
 - b. If this can occur and not result in the Town being sued, what conditions/disclaimers should we have placed on the deed?
 - *We can't guarantee that any of the interested abutters won't appeal the Planning Board's decision, regardless of what the findings are. 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 for you, is do you have a document in hand that purports to give these rights. That seems to be the case here. There is some question about whether Lot 4 (the retained lands) ever had access, so that's trickier (jump to sub-question f). In terms of the rest of the development, that the deed describes access by the right-of-way, and that satisfies the prima facia test, on its face, to show that there's a claim of Right, Title, and Interest, and that's all you need. You're going to have to say, "Private rights were alleged, that said the boundary is here, or that the right-of-way didn't include access to these lots, however, the Board cannot and does not by this decision resolve those issues." That is enough cover, that you're not purporting to do something that you don't have jurisdiction to do, which is resolve title disputes between private landowners.*
 - I. Jackson asked for clarification. Are you basically saying that right-of-way issues are private issues between landowners? Yes, when it comes to the scope of a

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right-of-way, I look for language in a deed. If there's language in a deed that benefitted this parcel with a right-of-way, particularly if it's bolstered by a survey or a surveyor's opinion, that is enough.

- c. Note, Mr. Losee owns all 4 lots, which are currently one lot.
- d. Lot 2 has a ROW to Trim Lane based on a deed (Book 1189 page 227), which indicates that it goes to Marshall Cove Road and then the Town road.
- e. Unclear if Lot 3 has an existing ROW.
- f. The applicant does not plan to sell Lot 4 (called "Other Land of David & Joan Losee" on the survey map) at this time and did not want it included in the subdivision, although it is part of the current large lot owned by Mr. Losee. Two individuals own the 400' section of Trim Lane that links Trim Lane to Marshall Cove Road. Their quitclaim deed to Losee states that access through this section of the lane is only for the former lots of the 1968 Sunset Acres Subdivision and explicitly states that the land formerly owned by "Corby", which appears to be Lot 4 and a small section of Lot 3, does not have access across this section of the lane.

-Lot 4 should be included on the subdivision plan as it is a portion of the lot being subdivided. How should this be shown, with conditions that there are ROW issues?

- *This one is more nebulous. It's not clear that to me that the applicant has shown Right, Title, and Interest to access to Lot 4. There seems to be a lot of dispute that the retained land, on its own, when you cut off the rest of this, has access over that right-of-way.*
- *Regarding the road frontage on the subdivision road, a previous memo recommended Lot 4 show 150' easement of road frontage. I think that with the lot that is being held back, we can't create a lot through a subdivision that doesn't meet Town standards, so I do think it has to show frontage on an appropriate right-of-way. If they can't demonstrate that they do have that frontage, whether because they don't have enough feet or because they can't substantiate that it's a valid right-of-way, then that would be a problem with that 4th lot.*
- *J. West asked if this would be considered a condition, if this Lot 4 is ever to be sold, that it has to show access to Marshall Cove Rd, or somehow to the Town public road? Or to even be created? Yes, for it to be created is the question. I would wonder what the owner's intention is with this lot. Is there any other means of access to it, off the far end of the lot, as opposed to through this right-of-way? Is there another way to give that lot access? Even if it's not one of the new lots to be created, because of the subdivision, it is creating a new lot. So this new lot has to meet all of the Ordinance standards as well, and that would include frontage.*
- *I think we're a bit far off on Lot 4. I don't know that you've received a lot of information that can be relied upon that says that Lot 4 specifically has Title and Interest to get over that subdivision road. You don't have, for instance, a lawyer's title opinion asserting that. What that might mean, practically speaking, is that the only option that could appear from everything you're seeing,*

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that Lot 4 doesn't have deeded access, then the subdivider's only option would be to keep that lot merged with one of the others that does have access, or to get a definitive opinion that tells us that there is certainly access.

- B. Schoppe stated the question has come up as to whether the abutters on the other side of Lot 4 (Carl Schoeppl and Islesboro Islands Trust) have been notified about this subdivision. Is that something we need to get addressed? David Losee replied that he has spoken with both parties, but didn't send a letter originally because he didn't want to include this parcel in the subdivision.
 - Todd Congdon pointed out that Camp Conundrum is an interested party.
 - Kara stated that this new map does not give the Congdons their previous frontage and access; it gives the right-of-way to Camp Conundrum. The line seems to be redrawn.
 - J. West asked if we should request that the applicant re-send the abutters' notice to everyone with a proper map showing this additional area. *Per the Ordinance, the applicant certifies to the Board that notice of the time, date, place of public hearing has been sent by certified mail to all abutters, as defined in this chapter of the property involved. The property involved is the entire original property, which includes Lot 4. So that needs to happen. If the Board is going to table this to request additional information, that's a good time to also send out this notice. Has the Board already held a Public Hearing? There should be a new Public Hearing scheduled. Once you have feedback on when the applicant's additional material is coming in, schedule the Public Hearing, then the applicant should send out that notice. At that meeting, you will open up a new Public Hearing.*
5. The owner of Marshall Cove Road has stated that the current lots off of Trim Lane have easements for use of Marshall Cove Road to access Trim Lane. How can David Losee grant Rights of Way to other parcels on Trim Lane from Marshall Cove Road if he doesn't own Marshall Cove Road? And is this something the Planning Board should be concerned about?
- T. Blackford stated he thinks this was explained with the right-of-way, in terms of subdividing, where the child lot inherits from the parent lot. The usage that Marshall Cove Rd incurs is a matter of private dispute. *K. Collins: Exactly.*
6. An abutter submitted a letter (dated August 8, 2024) to the PB that if the subdivision is approved with Lot 3's southern boundary overlapping a portion of the former "Corby" parcel then he would appeal. Would this appeal go first to the Town Appeals Board or directly to the courts?
7. Should a construction guarantee for the road be a condition of approval?
8. Should language be included regarding utilities? Phone poles do exist based on the subdivision plan.
- *Any other utilities to be considered would be private rights, so those are going to go on the individual lots. The utilities-easement question goes hand-in-hand with the road-easement question. If the lot is already served by poles, that demonstrates that there was no question about whether there were utilities within the contemplated easement.*

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B. Schoppe asked about a requiring a Road Association, along with #7: Should a construction guarantee for the road be a condition of approval?

- J. West replied that she believes that the applicant is responsible for upgrading the road to meet the Town subdivision criteria, and that prior to the sale of a lot, they have to have the road upgraded, according to our Ordinance.
- *K. Collins stated that if it doesn't say specifically that it has to be constructed prior to sale, that would surprise her. She will look into it. Usually, the applicant has the burden of bringing the road up to standard, or they have to give a performance bond or another guarantee that they will do so. J. West stated the reference for the sale of the lot is found in §45-81.*
- Robyn Congdon asked if the attorney is saying the Planning Board would require the subdivision owner to upgrade a private road to a Town Ordinance requirement. *K. Collins replied yes, within a subdivision. The Ordinance has specific standards that apply to private rights-of-way. They are less stringent standards, but are definitely in there, and it requires a subdivision to comply with those standards.*
- J. West asked if it is correct that we can require a Road Association for the subdivision lots, to ensure that the road is maintained to the Town standards. *K. Collins replied, only if the Ordinance specifically requires that. You can say that the owner of the road has to build it to standard, but you can't require any certain mechanism for making sure it's maintained going forward. The people buying in the subdivision will have the mechanisms available to them. The Planning Board can recommend a road association, but not require it.*

K. Collins requested that at the next hearing where this information is brought, she would like to review information in advance and be available for the entirety of the meeting. We need to work through each of the lots in terms what rights have been established, and do they satisfy the frontage. How much time does Mr. Losee need to gather the information?

- D. Losee asked what specifically he needs to gather. He will write a statement on the history of the boundary line and Trim Lane. Only the Superior Court can make decisions with regard to title, but he can explain why he believes access does exist to Lot 4. He will put all that in a letter.
- T. Blackford stated that specifically, we are looking for is demonstration that Lot 4 has right-of-way access to it, as each of the lots do. We can't create Lot 4 without resolving this, even without the subdivision.
- Terry Cowan stated the Board ought to ask the attorney if the Jesse Rolerson plan that was submitted and approved by the Board of Selectmen did in fact move the proposed road or just change the right-of-way.
- *K. Collins requested that the Board make sure she has any relevant documents in advance.*
- Kara requested to see the deeds for the paper road Trim Lane. She hasn't found that there is a deed for the proposed road. Maine state law acknowledges in this situation that all members of Sunset Acres subdivision must be alerted of any proposal. J. West suggested she digs through deeds from 1967 on. T. Blackford reiterated that the Planning Board is concerned

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about right-of-way access to Lot 4. In terms of the boundary and the paper road, that's a personal dispute. It's immaterial to this matter. Boundaries are determined by deeds and by surveyors, not by the Planning Board. This is a boundary dispute to be taken up by legal counsel.

- Todd Congdon clarified that Mr. Losee needs to send revised letters to all abutters to reflect the updated plan.
- D. Losee asked for clarification on who he needs to send letters to. All property owners on Marshall Cove Road, or just the abutters to the parcels in question? G. Rivera answered that only the abutters need to be notified.

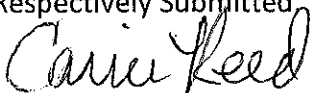
Motion: To Table Application MD 01-24 for additional information from applicant, in a letter that we can present to the Town Attorney, regarding Lot 4 right-of-way issues, and letters to abutters with updated plan, I. Jackson, seconded by A. Bertulli. Kara Masters Siekman interrupted the motion with a question about abutters' rights. Discussion about notifying abutters vs. all property owners along the private roads. No further discussion from the Board. Motion passed, 5 yes, 0 no, Unanimous.

K. Siekman stated she has filed with the appeals about due process. I. Jackson replied that that's her right.

- Correspondence: None.
- Committee Reports: None.
- Chair- Additional Business: None.

6. Adjournment of Meeting

Motion: To adjourn meeting at 6:27 PM by I. Jackson, seconded by G. Rivera. No Discussion. Motion passed, 5 yes, 0 no, Unanimous.

Respectively Submitted

Carrie Reed

