

**Machias Board of Appeals
Minutes**

July 27, 2023

Meeting regarding appeal filed on Graham Holdings permit on Canal St. Property

Carol Christianson, Ann Marie Evans, Andrew Mulholland (chair) and Tora Johnson (secretary)
(Quorum)

- Call to order: 5:08
- Any conflict of interest concerns? None
- Board introduced themselves per request of a party
- Appellant presents case:
 - o Jeanne Tennison
 - I live at 40 Water St
 - Items to review, per request of attorney
 - Our written appeal was never reviewed by this body
 - Several things happened during the process starting on Dec 7
 - On Dec 7, Mr. Graham went to a Planning Board meeting without being on the agenda, went over entire plan. I was informed that it wasn't on the agenda and that I didn't have to be at this meeting
 - Did go to the following meeting in January, discovered that it wasn't a "cut and dried case" and decided to hold over until February
 - Found out at that time that Mr. Brody, the CEO, had been coaching Mr. Graham.
 - DEP was not on board, as asserted at that meeting
 - 2nd week in Feb, an emergency meeting was called.
 - Filed a FOIA to get info. I asserted that Ms. Dawn Herd from DEP sent a letter to town saying that when they did their walkthrough, they discovered that some areas had been de-vegetated. This doc not included in FOIA materials.
 - Felt biased, one-sided, discriminatory and continues to be
 - Attempts to set up a meeting failed because Graham didn't want to meet
 - Told time and again by members of the board that the lawyer's info was not the law, but when info was presented by the applicant it was accepted without question
 - Accuse CEO Brody of improperly favoring Mr. Graham
 - Reiterate that applicant does not have sufficient right and title. Plan shows encroachment. Have a survey and a letter from title insurance company.
 - Planning board decision legal errors:
 - Lack of factual findings how the development meets to shoreland zoning standards

- Finding cottages are not dwelling units because they would be used for transient purposes
 - Finding the main office is principal structure and cottages are accessory structures
 - Finding that the setbacks in the general district supersede shoreland zoning districts
- Daniel Pileggi, Attorney for Graham Holdings
 - Every boards authority is limited by statute. Burden is on appellant to meet burden of proof
 - The ordinance requires this board to hear no new evidence and determine if the decision is contrary to facts or statute/ordinance presented to the planning board.
 - If there are disputes about boundaries, the appellants may take appropriate legal action
 - General Development 1 is a shoreland zoning district, and its provisions applies.
 - The planning board's findings make clear that the plan meets those requirements.
 - You have the decision and its detailed evidence:
 - DEP permitting, with copy of the permit
 - Ms. Tennison did not present any portion of the Planning Board record to refute. It is within the board's rights to determine the validity of information before them.
 - Burden of proof is on the person appealing that there are "no facts" supporting the Planning Board's findings.
- Jon Pottle, Town of Machias Attorney, advisor to the Planning Board
 - Planning board met in January, had questions. In February I provided advice.
 - The type of review:
 - Appellate standard of review is looking specifically at record of the Planning Board, as opposed to de novo review looking at new evidence the Planning Board did not review in their deliberations
 - Last meeting, we didn't have a written decision, aptly required one.
 - The question: Would a reasonable person come to the conclusion or interpretation of the ordinance
 - The document is sufficient to satisfy the written decision requirement
 - I believe those are laid out in the decision
 - Planning board does not have jurisdiction over the boundary dispute, but the board does need to determine whether they

have right, title and interest in the property. If they have a deed and title, they have rights. Claims of encroachment are for the courts to decide.

- Dwelling units have a specific meaning and definition. Transient accommodations do not meet legal definition of dwelling unit. Precedent in Lincolnton where transient units were being repurposed into rentals. The Planning Board had it right in calling them accessory structures under the ordinance.
 - Shoreland Zoning ordinance sets the requirements of the size of the unit, and this proposal is correct.
 - General development district is meant to allow a certain amount of development activity, so it has different setbacks. It would be an error to apply another district's provisions to this area.
 - Some of the DEP correspondence looked at whether other laws applied, such as "significant river segment." DEP determined it was not.
 - It is typical for someone to reach out to the CEO for guidance in preparing a proposal. Town staff are there to provide information, and it's not unusual for someone to show up at a Planning Board meeting to provide an informal summary of a proposal to discuss it before making a formal proposal.
 - I think you should find that the Planning Board's decision was sufficiently supported.
- Kevin Brody, Code Enforcement Officer
 - I am the subject matter expert. People do come to me to discuss projects ahead of applications.
 - General development zone, supersedes any other ordinance, with 25 foot setback.
 - Receive 5 to 10 calls per day from realtors. Need to do due diligence on what zones and laws apply
 - The letter from DEP stating Mr. Graham had illegally cut in the area was sent out in error, and then it was quickly rescinded.
 - I advise different boards as a subject matter expert
 - Statutes say the Planning Board is the final authority
 - Graham Holdings
 - Initial denial was related to belief was on a significant river segment. Rescinded.
 - DEP visit found that some cutting had been done
 - John Morse
 - We live in direct sight and sound of the project

- The Planning Board received numerous comments and documents that are not factual
 - December meeting was not official, but it was discussed. The public was not notified that it would be discussed.
 - Concerning the letter, only found out this would be on the agenda by visiting the town office
 - Requested the letter from the Planning Board to the Appeals Board. Was told “we don’t have a copy”. Later got it by email from Bill Kitchen.
 - The letter was dated June 7th, but the town didn’t have a copy of it. Did not have sufficient notification to appeal within the 30 days.
 - None of the concerns raised to the Planning Board have been addressed. Heard nothing from them.
 - We attended the last Appeals Board meeting via Zoom. Never raised that you have 30 days from decisions and findings of facts.
- Grahams
 - Regarding concerns about raising discussion at the December meeting. That is allowable. So the formal process didn’t begin until January when they had a proposal before the board.
 - This area is in the General Development zone.
 - I’ve been a builder for 35 years, know the law, know the process. Did due diligence with DEP, CEO, etc.
- John Morse
 - Reiterating the concern about the 30 days.
- Jeanne Tennison
 - Leaving out story of 35 day rule. CEO called 2 executive sessions to discuss the 35 day rule for approval from permit submission
 - Survey: I said many times at the Planning Board that I was pursuing the survey. Mr. Pileggi says he has a survey now, but he said earlier that he didn’t have one and didn’t need one.
 - Told in the meetings that a right of way had been acquired, but that is not true.
 - Permit was changed regarding setbacks at the meeting to make it possible.
- Board Member Evans to Tennison: What is the specific objection to the proposal?
 - Refer to points mention earlier
 - Also, personally feel treated with bait and switch from realtor who said CEO told them the lot was not developable
 - Natural beauty will be destroyed.

- Consensus: Close comment period and begin deliberations.
 - Review
 - Regards to first meeting in December
 - Very common and encouraged to reach out to Planning Board and CEO, generally works out in best interest
 - Not an official proceeding, just consultation and a way to understand complexities, red flags.
 - Sufficient right and title
 - Competing surveys. Sometimes Planning Board will require a survey, especially a subdivision.
 - Do we feel the Planning Board should have asked for that?
 - At what point was the objection raised? Should they have asked to see them.
 - Every project is slightly different.
 - If the boundary dispute would affect the feasibility of the project, then the board probably should have.
 - Issue regarding calling it accessory units vs dwelling units
 - Question to Mr. Graham: Is this just going to be short-term rentals? Short-term only, shut down during off-season.
 - Precedent: Supreme Court of Maine (from Kitchen) Jan 3 1990 held that rental cabins for transient populations are not dwelling units. Case 567a.2d1347. Oman vs. Town of Lincolnville.
 - Appears that Planning Board did due diligence.
 - Setback related to shoreland zoning.
 - The Planning Board did apply the zoning ordinance, as required.
 - Remaining issues are only whether the boundary line dispute would impact the feasibility of the project. It was not in the notice of decision.
 - Concern about the late release of the findings. Is that relevant to our decisions.
 - It was sent to parties, clerk, relevant officials, etc.
 - They have never issued one of those letters, but they are supposed.
 - Pottle: The board did issue a decision at their meeting.
 - This is not relevant to the current proceedings, but suggests need for better communication
 - Question for Graham: Do you have a survey? It's currently in draft. We have right, title and interest to the property, so didn't get
 - Pottle: It's not clear to me what benefit there would be to sending it back to the Planning Board. Where in the ordinance does it say that all court challenges are resolved before issuance of permit.

- The parcels in question, according to tax commitment book, are under the 60,000 acre threshold.
 - Could the planning board, if there is a dispute, issue a permit? It's likely to be a civil case anyway. There are no stamped plans required. They had no substantial evidence presented to the Planning Board.
 - If this was the only sticking point, and the 60 days had passed, it would be either approved, or upon agreement with applicant, postponed.
- Appears to be Consensus: The Planning Board did follow the process based on current ordinance. Nothing merits second guessing. A reasonable person would have suggested that a survey should have been done, but that was not legally required.
 - Motion to deny the appeal (Johnson); Second (Christianson). Motion carries, unanimous.
 - We agree some issues in the ordinance should be resolved to preclude such issues in the future.

Break before writing the letter.

Motion to adopt the notice of decision appended below (Johnson), second (Christianson).
Motion carries unanimously.

Motion to adjourn. Second. Unanimous.