

Arundel Planning Board
Minutes of Regular Meeting
June 11, 2015
ML Day Library 600 Limerick Road
Call to Order: **7:31pm**

Attendees: Tad Redway, Planner Marie Burgie, Secretary, Rich Ganong, Chairman
Board: Bob Coon, Marty Cain, James Lowery, John der Kinderen, Roger Morin, Tom McGinn
Public: James Naigle, Bud Legros, Ryz, Keith Trefether, Dan Dubois, Tom Danylik, Phil Labbe, Leah Rachin, Asts K, Patty Del, Randy Oban, Rick Dubois, Sol Fedder, Nuerl Dubog (Names misspelled due to legibility on sign-up sheet)

I. Approval of Agenda:

Morin motioned to approve agenda, Second by der Kinderen; unanimously approved

II. Approval of Minutes:

April 9, 2015 der Kinderen motioned to approve minutes, Second by Cain; unanimously approved.

May 7, 2015 Cain motioned to approve minutes, Second by Cain; unanimously approved

III. Hearing:

Item 1: Dubois Livestock Inc: Request to Present Evidence of Planning Board Bias in the matter of a Conditional Use Permit Renewal for Dubois Livestock Inc Composting Operation located at 2 Irving Road, Tax Map 19, Lot 6 in the R-4 District and the Shoreland Overlay districts. Ranrick Trust is the owner and Dubois Livestock, Inc. is the applicant. *der Kinderen Recused himself due to being an abutting property owner.*

Sol Fedder stated that composting is now regulated under the heading of agriculture farmland. He wondered if he should withdraw application. Chairman *Ganong* explained that the purpose of discussion was to show evidence of bias from the Planning Board to the applicant. *Fedder* then spoke of the process of how the Dubois permit was processed by our town.

Discussion included the executive session that was held on April 2nd and areas of bias in regards to it. *Fedder* felt the session was a mechanism to unfairly discuss the Dubois Farm. *Chairman Ganong* explained that he couldn't rebut comments since he is not allowed to discuss the contents of the executive session. *Ganong* wondered that even if the board had heard anything in any way about the Dubois Farm, why *Fedder* would feel the individual members of the board would not vote impartially.

Town Attorney Leah Rachin, defined bias as she had done in a prior meeting. She also discussed that boards have the right to call executive sessions to discuss the rights and obligation of the board. *Fedder* disagreed and felt the session was held to undermine the Freedom of Information Act.

It was decided to determine and vote on each individual board members' potential bias as well as the board as a whole regarding if they would be bias to the applicant.

- A. Individual comments - *Coon*- felt that we should examine administrative procedural coordination of applications, but felt no bias. *Cain*, repeated that he was not at the Jan. 15th meeting. He stated that he's pro-business and not bias. *Lowery* also felt that administrative processes should be improved, but felt he could review application to make decision without bias. *McGinn* stated that he has always been glad to help find solutions to move forward. He stated he was looking forward to opportunity to look at application in a fair and just manner. *Morin* stated he has been on this board for many years and has never seen the board act in bias against any applicant and they will continue to follow matters as best for the town without bias. *Ganong* said he felt perfectly capable of looking at an issue based on it's merit without bias.

Cain motioned to poll individuals to determine bias, *Feder* wondered why a "motion" was needed and *Cain* explained so that it is "on record". The attorney was questioned and she agreed that it would be appropriate.

McGinn motioned that *Coon* is unbiased in this matter. *Lowery second*, *Coon* abstained, Motion Passed

McGinn motioned that *Cain* is unbiased in this matter. *Lowery second*, *Cain* abstained, Motion Passed

McGinn motioned that *Lowery* is unbiased in this matter. *Coon second*, *Lowery* abstained, Motion Passed

Morin motioned that *McGinn* is unbiased in this matter. *Coon second*, *McGinn* abstained, Motion Passed

McGinn motioned that *Morin* is unbiased in this matter, *Coon second*, *Morin* abstained, Motion Passed

McGinn motioned that *Ganong* (present Chairman) is unbiased in this matter, *Cain second*, *Ganong* abstained, Motion Passed

Cain motioned to to take vote of determination that board is unbiased in this matter, *Morin second*, *Coon amended to remove the word determination and change to the board is not biased*, *Cain second* unanimous agreed

IV. Pending Applications:

- Item 1: Dubois Livestock Inc Agricultural Composting Operations: Conditional Permit Renewal- Determination of Completeness:** Proposed renewal of a 20 conditional use permit for an existing composting facility producing an annual output of 5,806 cubic yards of finished compost material on a 3.1 acre parcel located at 2 Irving Road, Tax Map 19, Lot 6 in the R-4 District and Shoreland Overlay districts. *Ranrick Trust* is the owner and *Dubois Livestock Inc.* is the applicant.

Chairman *Ganong* asked for discussion regarding that on June 5, 2015 the Farm Act was amended making significant changes in statute making Compost an agricultural product and no longer considered Solid Waste Statute. *Dubois Farm* is considering withdrawing their application due to being unsure if application would be decided under current ordinance. They may wish to hold in abeyance instead of withdrawing. *Cain* asked how it makes a difference in agricultural use. Where does this fall for our zoning or anything else?

McGinn said it's the first time we're seeing this information and would like time to review.

Town Attorney Rachin explained that she understood if the board needed more time to review. However the Maine agricultural protection act would be a court determination which wouldn't be addressed in court unless planning board makes a decision that is appealed. Without deciding on the application we "are in no man's land". Her recommendation was to consider the application. Then, applicant can bring forth that they are no longer covered by town jurisdiction. She explained that in a previous case the town prevailed in, it stated, "Even if Dubois operation were a farm, the agricultural protection act does not preempt town ordinances." It is a farm and whether or not the Town of Arundel prevailed would be completely up to the court. A decision should be made in order to move forward.

Feder stated in that same case, they also explained that "you can make all the ordinances you want"-this issue with the act is not that it's preempted", "the act itself prevents a town from fining someone in violation of the ordinance" as long as they follow best management practices. "The ordinance is not effective against the farm."

The town can have an ordinance, but can not fine against it. Feder stated that this town has litigated against them time after time, complaining about the legal costs of going to court. He felt the planning board had the ability to sit down and look at a law and see if it applies to it's own ordinances. "It's not up to a court to decide, it's for the people to decide."

Ganong stated that it is up to the board to look at the current land use ordinance the town enacted and follow what's appropriate to stay within those bounds. It is not the boards' decision to go to court or not. "That is something the Selectmen would decide on." Based on council's advice, he wanted to proceed forward or have the applicant pull the application completely and asked for the board's input.

Feder explained interest in holding application in abeyance to give them time to prepare for the changes in state law that effects the ordinance. Composting is now agriculture and he felt the right-to-farm-act would protect them.

Ganong felt that since the court has not ruled otherwise, the board can make a decision. Until the court makes a judgement, it isn't fair to the applicant or rest of town to wait for the court to have a decision made in another court case before reviewing the application. He suggested the board review it if applicant would submit application.

Feder said they had submitted it "before the law" and wanted to know if the board would look at it before they withdraw it. ***Cain motioned*** to review it and ***Coon second*** Feder wanted board to determine if ordinance fits (before the review) since composting is no longer consider "solid waste". He wanted to be sure the application would fit into towns' current ordinances.

Ganong said, "If we review, we are taking the position that the ordinance fits." He stated that the board has an application before them and advise from attorney to move forward to determine completeness. ***Vote was All in favor and approved***

Feder, after briefly speaking with Rick Dubois, applicant in audience stated "The application is withdrawn".

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Ganong stated they had the right to withdraw and from this point, it is up to the Selectman whatever occurs since it is no longer in front of the planning board. He asked if there were any comments from public about this issue and there were none.

The applicant and entire public audience then left the room with Feder quietly saying, "We will be filing another lawsuit".

A question was made from a member of board if they needed to vote for election of officers and Chairman said it would be done at the first meeting in July.

Cain asked if the Dubois farm was to continue operating or not. Ganong answered it's up to the Selectman and McGinn said it's actually up to the CEO who would report to Selectman.

Cain said he suggested that they submitted it, so it doesn't get cancelled for being a non-conditional use. Many members remarked that we shouldn't discuss applicant any longer.

Coon stated that we came here to talk about it, and they were the ones who left the room.

Attorney stated that the agenda reflected we were here to discuss bias and completeness of application and should not discuss anything other than that.

Ganong said, "It is out of my hands".

V. Planners Report/ General Discussion -

Cain suggested a stamp in town hall to record received date on applications, etc. Redway said they had already implemented a procedural system in town hall to improve processing of applications. Coon said that wasn't really the argument. The argument was that it wasn't moved upon. Ganong said it is a good idea to have a procedure for incomplete applications. Attorney suggested to make the procedure for incomplete site plan applications clearer for applicants at next year's town meeting. Incomplete applications are clear for subdivisions. Planner stated that currently, it is clear that he gets to review and determine completion prior to submitting applications to board. Attorney agreed that it's clear that it was delegated to planner to review prior to submission.

Cain recommended a check list including Planner bringing every application before board and if it's incomplete the board should know of its existence. Lowery agreed that the board should be informed of incomplete applications.

Planner Report: New application/pre-application for large green house for experimental purposes at Naoto's property on Limerick Rd. It's too large of a structure to handle at staff level since threshold is 1000sf before it goes to planning board. Ganong asked if property is in DB1 or DB2. Redway said he would check the map.

Redway asked about confusion on Cape Arundel Seasonal cottages having to come back to the board again.. Coon said that Paolini said he would come to the board at the beginning of each phase even if there were no changes. der Kinderen mentioned the community center was approved with condition that they created additional parking.

Cain asked if Arundel Seasonal cottages have same road scrutiny as Parker

Fairway Drive had been approved with conditions

Adjourn:

der Kinderin motioned to adjourn, Morin second, unanimously Approved 9:15pm

