

**Arundel Planning Board  
Regular Meeting  
Minutes 4/23/2015  
Called to order at 7:03pm**

**Attendees:** Tad Redway, Town Planner, Richard Ganong, Chairman, Marie Burgie, Secretary  
**Board:** James Lowery, Marty Cain, John der Kinderen, Tom McGinn, Roger Morin  
Town Attorney, Lea Rachin, Deputy Troy Chenard  
**Public:** Daniel Dubois, Jacob Amam, Bud Legros, Steve Raton, Randy Dubois, Sol Fedder, Marcel Dubois, Rick Dubois, Charles Bassett, Paul Sfredo, Donna der Kinderen, Joanne DeWitt, Suzanne Madore, Jake Hawkins, Marie Lemay, Valeri Paradis, Eleanor Heinze, Dana Peck, John Porasford?

**I. Approval of Agenda: *Morin motioned, Cain second - Unanimously approved***

**II. Approval of Minutes:** April 2, 2015 minutes; *der Kinderen motioned to approve, Morin second, McGinn abstained since he didn't read yet, Lowery abstained since not at that meeting. Passed 4 in favor 2 abstentions* . April 16, 2015 minutes; *der Kinderen motioned to approve, Cain second, Passed 5 in favor - McGinn abstained.*

**III. Pending Applications:**

**Item 1: Dubois Livestock Inc. Agricultural Composting Operations: Conditional Use Permit Renewal - Determination of Completeness:** Proposed renewal of a 2011 conditional use permit for an existing composting facility producing an annual output of 5,806 cubic yards of finished compost material.

Feder didn't know why they were on agenda and asked to be removed from it. Chairman Ganong said there was an issue of "Alleged Bias" of the Planning Board in regards to the applicant. He explained to avoid multiple hearings, the directives of the board was to have the Town Planner make decision if an application is complete before it's presented to the board.

He turned over discussion to the town Attorney, Rachin who discussed legal definitions of bias and how it's determined. She also discussed definitions of conflict of interest which would "fall under the umbrella of point of burden". She noted that the burden of proof to establish bias is on the person who has alleged it.

Ganong said he asked for this application to be put on the agenda to discuss if applicant could prove bias that has been publicized in print by Feder; as well as review the completeness of the application. *der Kinderen excused* himself from panel since he is a property abutter to Dubois.

Feder felt the applicant is not prepared at such short notice to discuss the bias allegation or completeness of application. Feder felt entitled to request a hearing and have evidence heard on the bias allegation. The town attorney said that the board should not be cross examined unless there is some foundational evidence that raises the issue. If there is evidence that puts it over that threshold, then there is the rights of due process.

After calendars were reviewed, June 11th, the night after town meeting, was scheduled to have Feder represent Dubois Livestock's presentation of evidence of bias. The determination of completion of the application, shall be an administrative decision after the hearing.

***McGinn motioned to table the Bias and Application until June 11th or after; Lowery seconded, Unanimously Approved***

**Item 2. Parker Woods Drive Expansion: *Private Way Application: Proposal to extend*** Parker Woods Drive 1,300 linear feet and make improvements to the entire length of the private way to meet the construction standards for a road servicing 3-7 residential lots on a 40.4 acre site located at 183 Downing Road, Tax Map 26, Lots 3 and 3C, in the R-4, Shoreland Overlay, and the NRC Zoning districts. Troy Parker is the owner and William Walsh III, PE is the owner's agent.

A site walk was held at 6pm. (Separate Minutes) Board members felt satisfied with what they saw. The old tote road will be moved over a bit to meet the new property lines. Discussion that road is being moved to the east to not cross Mr Parker's property at all. Permit by rule to DEP. Applicant asked for waiver to determine existing road standards with confirmation of 18" of gravel under of which a core sample would determine. Mr Parker said he can produce gravel specifications on the original and new road. He is willing to take 2-3 points and dig a few holes with small excavator. Lowery suggested that engineer could write up what he sees. Board felt there was not a major impact and was comfortable. der Kinderen wondered about doing a retention pond? Parker felt unsure that widening or ditches would help. Redway said, "You don't want to increase velocity. ***Cain motioned to hold public hearing on this on May 14th, Lowery second Unanimously approved***

At 7:45pm a break was held for Historic Society reps. to enter **Meeting Resumed at 7:54pm**

**Item 3: Goff Mill Brook Dam Removal: Conditional Use Pre-application:** Proposal to demolish an existing 25 +/- foot wide dam on the Goff Mill Brook in order to facilitate the migration of marine fish, eel and lamprey species from the Kennebunk River at a property located at 94 River Road, Tax Map 40, Lot 8 in the R4, Resource Protection, and Shoreland Overlay Districts. Mary Castner is the owner, the Wells National Estuarine Reserve is the applicant, and Jacob Aman is the applicant's agent.

The applicant Mary and her sister, Milda Castner have been working with the Army Corp. for approximately two years and are now ready to move forward. They have the DEP Permit by

Rule. Historic Society asked for 30 days to pull together their information. Aman stated that the State of ME has thousands of old dams, logging operations, etc. that are no longer active. These block freshwater fish and brook trout. There is a large movement to pull out old dams when it makes sense to. Jake Hawkins referred to historic docs by John Bradford (who use to live on the site) regarding the larger dam which is now the Cape Arundel Golf Course. The upstream dam is mentioned as possibly the 1675 Foster's Mill Dam. Maps aren't accurate enough to clearly identify location. Stone and timber were replaced with stone and concrete. Many dams are breached in a number of places with water flowing under them. This dam has significant Beaver damming activity. There is not a lot of water behind this dam, which may cause a negative impact to stream and water which is a preferred habitat to native fish.

derKinderen questioned as to the actual owner of the dam. Castner's deed stipulates rights to the "opposite bank" and the neighbor's deed stipulates to the high water mark. Questions as to the point of removing the dam when Beaver Dam is right behind it. Aman answered that beavers create naturally occurring structures and therefore are considered temporary. Approx. 7 miles of perennial stream goes after dam. Ganong stated that "In 450 years fish haven't gotten up that stream. If we remove the dam, isn't the freshwater going to turn brackish?"

Questions arose about diminishing historical value of Colonial people to landscape. Yet, removing small dams could restore the river to it's historical significance of Pre-Colonial days. Questions arose as to what we lose by changing the entire ecology of the river. Discussion about the tide reaching the top of the dam and that the Historic Society is interested in studies as to the effect of removing the dam. Aman explained that studies are too expensive to do and monitoring would be done afterward. "This dam does not control flooding - Water levels would actually be lower than they are now. Goffmill brook is a small stream compared to many and can only support so much. No studies would be done to show that the ecology improvement will take place. There would be no engineered reports and studies along the way. Aman asked what species he felt may be altered by the change and was told it's the applicant's responsibility to show impact, not the board's. Aman stated that if Army Corp, ME Dept of Inland Fisheries, US Fish & Wildlife and Nature Conservancy's letters of recommendations don't prove ecological impact, then he doubted he could.

Siting "Historic Value" as a water pool to harvest ice on that property and current home to eagles, peregrine, falcons, etc., Dewitt suggested Aman submit a package with benefits to Planner's office. Redway suggested doing a site walk at the dam.

Donna der Kinderen stated that the Historic Society is interested in manmade and ecological aspects. She felt, since man-made, the dam should be kept because it's old and part of our town. Also, the dam has become an ecosystem for many years.

Aman asked if the waiver request would be decided on that night. He said he had offered to speak to the Historic Society last fall. He also offered to have a biologist from Dept. of Marine Resources come. Ganong stated that we were curious as to what will happen upstream. Lowery asked Redway if the board has permission to grant authorization of owner to act as agent when agent is acting on behalf of "Trout Unlimited".

Since Site Walk would take more than an hour, it was decided to be scheduled for a Saturday. The field workers window to perform is July 16 - Oct 2nd.

**McGinn motioned** to schedule site walk for May 2nd at 9am subject to permission of land owner, **Morin second, Unanimously agreed**

#### **VI. Planner's Report/General Discussion**

May 7th to be first public hearing

May 21st to be 2nd public hearing - after comp plan committee meeting at 6:30pm

No new applications

Staff review - Campground - no Quorum - no decision

Have two applications with developments who are not ready to move forward

Notify Dubois that meeting should be rescheduled to May 14th.

Southern Maine Mariner - Foundations are in for new building - Have permit?  
Phase III- New Facility=Sales Office

Discussed package regarding Goff Mill Brook Dam Removal

Cain felt insulted to be accused of being biased.

**Adjourn: McGinn motion to adjourn Morin seconded - Unanimously at 9:10pm**

(No meeting to be held on April 30th)