

MADAWASKA PLANNING BOARD MINUTES
TUESDAY, May 13, 2014
AT 5:00 P.M.
Board of Select People's Chambers

Public Meeting

MEMBERS PRESENT:

Vincent Sirois; Chairperson, Gary Dufour, Jeff Albert, Tom Schneck,
Vince Vanier

OTHERS PRESENT:

Dan Thibeault, Johanne C. Thibeault, Kristopher Albert, David Morin,
Daniel J. Daigle, Harold Pelletier, Earl Pelletier

RECORDING SECRETARY:

Sarah Pelletier

CODE ENFORCEMENT OFFICER:

Robert (aka Bob) Ouellet

ARTICLE 1: Call the Meeting to Order.

The meeting was called to order at 5:02.

ARTICLE 2: Establish a Quorum of Members.

A Quorum was established- Vincent Sirois, Gary Dufour, Jeff Albert, Tom Schneck, Vince Vanier

ARTICLE 3: Determine any Conflict of Interest or Bias

Jeff Albert has a Conflict of Interest to Article 5. He will be presenting this Article to the Planning Board.

ARTICLE 4: To review and discuss the relocation of an existing structure regarding the Greatest Practical Extent from the normal high water line to Daniel and Johanne Thibeault of 173 Lake Shore Road, on Map 35, Lot 24, Zoned Limited Residential District, Shoreland Zone.

Daniel Thibeault addressed the Planning Board on this Article. He is required to move a non-conforming 11'X12' screen house further away from the shore line. The previous owners never obtained a permit for this structure. The shed is a solid, cedar structure and is thirty (30) years old. It currently lies in the center of the property and is thirty-five (35) feet

from the normal water line; Mr. Thibeault wishes to move it sixty-five (65) feet from the water line. Mr. Thibeault states that in the past year, he has removed two sheds off of this property. One was a 9'X9' and the other was 7'X7'. He wishes to move the building in question in line with his other 10'X20' shed currently at this site. Mr. Thibeault previously came in for a permit for this conforming 10'X20' shed and it was built in October 2013. The proposed site would be six (6) feet from the abutting landowner. There is a tree line separating his lot from the neighbor's. The Board questioned the use of the section on the left portion of the property as viewed by Google Earth. According to Mr. Thibeault, the far left side of the property is being used as a boat driveway. The Planning Board needs to determine Greatest Practical Extent from the normal water line.

Gary Dufour motions to allow Daniel Thibeault to move his screen house to the desired location which is approximately sixty-five (65) feet from the high water mark and six (6) feet from the property line. Tom Schneck seconds the motion; all are in favor.

ARTICLE 5: To review a Renewal Mineral Extraction Application to Marcella Albert located on Dufour Road, Map 26, Lot 7, Zoned Rural Farms.

Jeff Albert steps down for Article 5.

Jeff Albert presented this Article to the Planning Board in place of his wife, Marcella Albert. Mr. Albert is here to renew a Mineral Extraction permit. Jeff Albert was granted a permit last year for mineral extraction and the stipulations were that he would come before the Board each year to review any progress and concerns. There are two acres of land available to work with. He has currently mined 250 yards and only mines as needed then reclaims as he goes. Gary Dufour questions Jeff if there's been any complaints and concerns from the neighbors and Jeff responded that he hasn't had any complaints. According to Jeff Albert, it is written in the Ordinance that Mineral Extraction is to be reviewed every year.

Gary Dufour motioned to approve the permit for another year. Vince Vanier seconds the motion; all are in favor.

ARTICLE 6: To review proposed Land Use and Development Code Amendments and MMA correspondence.

Gary Dufour states that he contacted Maine Municipal Association (MMA) about the two Articles that were proposed at the last meeting.

Gary shared with MMA that the Planning Board wishes to change the Building Permit wording in the Madawaska Land Use & Development Code, Section IV, subsection D. He also shared the proposed changes concerning all existing sheds and garages.

The Planning Board addresses the Article 1. Gary Dufour reads the proposed version that was presented to MMA.

No building or other structure shall be erected, moved, added to, or externally *enlarged (instead of altered)* without a permit therefor, issued by the Code Enforcement Officer. No building permit shall be issued except in conformity with the provisions of this Code, except after written order from the Board of Appeals. The Code Enforcement Officer shall maintain a public record of all building permits. A permit for which no substantial work has been commenced within six months shall expire. If the building or part is not substantially completed within two years of the issuing of the permit, the permit shall lapse. It may be renewed upon application. The building permit shall not be required if market value of the work is *\$15,000.00 (rather than \$500.00)* or less.

Jeff Albert questions the other Planning Board members “If someone puts a \$16,000.00 roof, does that need a permit?” The Board responded that it is over the market value and needs a permit. If they put a \$14,000.00 roof up, they don’t need a permit. The Planning Board discusses the term “market value” and the Code Enforcement Officer’s interpretation versus the homeowner’s interpretation. Jeff Albert mentions that he’s thinking that there shouldn’t be any permit for upkeep of one’s property. Jeff Albert addresses Select Person Dave Morin, who is in the audience. “Dave, is there any other reason besides zoning that we need building permits?” Jeff mentions “Taxation would be one.” Dave responds, “Yes, taxation... but, we go through a re-evaluation every ten years.” Dave continues, “Concerning taxation... If an individual has a \$100,00.00 house and they put \$14,000.00 into it, there shouldn’t be an issue. On the other hand, if an individual buys a \$100,000.00 house and puts a \$100,000.00 in it, then that is an issue of value and taxation. Selectperson Dave Morin discusses establishing market value. He recommends that the value of the building material be equal to the cost of labor.

Jeff Albert suggests that the wording of the Ordinance be transparent to the average person that reads it. This should prevent any inconsistencies from one individual to another. They should be able to read it for themselves and know what is required.

Vince Vanier questions the Code Enforcement Officer, Bob Ouellet, about how assessment, taxation, electrical and plumbing inspections and code enforcement relate to permits. He questions if the permits inform the assessor of the need for electrical, plumbing or building inspection and if the permits confirm whether home owners are in compliance. Bob Ouellet

responds that the building permits update the assessor on changes that have been made to a structure. Bob Ouellet responds by referring to the form he prepared which evaluates and compares the 2012/2013 number of permits issued and estimated dollar value of all the permits. This form also demonstrates and compares the estimated dollar value of new structures and renovations in 2012/2013. It also takes into consideration the increase value of the town. He points out the dollar value that just the permits and inspections have brought to the Town of Madawaska. Vince Vanier gives an example that if Gary decides to put asphalt roofing on his home and the roof has a certain dimensions, does the assessor, Randy Tarr have a formula that he goes by? Mr. Ouellet responds that he does figure it out and it becomes his call whether he decides to raise the taxes or not. Mr. Ouellet than adds, replacing a roof would not necessarily raise the value of a home but, if the following year a homeowner also replaces the siding, the roof and siding will probably raise the value of the structure, therefore raising the home owner's taxes. Mr. Ouellet added that if you don't have a process, for a lot of people, everything stays the same; the value of a home would stay the same and the mil rate would probably go up. Vince confirms that compliance with the Electrical and Plumbing Codes are determined on the State level and now the Town of Madawaska has adopted the State Building Code.

The Planning Board agrees to get feedback from the public in case they've overlooked anything or to acquire any new information. Before going on to public discussion on this issue, Planning Board member, Gary Dufour, brings up the topic of a letter he received from the attorney at Maine Municipal Association (MMA) in response to an inquiring letter that he sent to them. The letter from MMA states that MMA cannot communicate or correspond with anyone other than the Town Manager, Town Chairperson or Select People of the Town of Madawaska. The Planning Board tried to recall when this stipulation by the Town of Madawaska had taken place. Some of the members recalled a letter being sent to them about two years ago.

Chairperson Vincent Sirois requests a motion to open the meeting to the public. Vince Vanier makes the motion and Tom Schneck seconds the motion. All in Favor

Chairperson Vincent Sirois informed the public that he would give them each a few minutes to share their concerns.

Daniel Daigle expressed that it would be an advantage to the Planning Board to touch base with MMA for an interpretation of *Fair Market Value*. He continued that this is not the first time that this is brought up. Does the Board of Selectman have power over the Planning Board or does the Planning Board rule over the Selectman when it comes to a final decision. In the past, Selectman Dan Ahearne made a motion to pass concerning \$500.00 permits. He motioned to the effect that it would

exclude the cost of building material, if the individual had some on hand, and exclude the cost of labor. Daniel believes that according to MMA the *Fair Market Value* includes the building materials and the cost of labor. Was this motion made by the Selectman nullified or does it pertain to today? How will it affect what the town's people will vote on? Where does Randy Tarr fit into the duties of a Town Selectman as tax collector and overseer of the poor? Jeff Albert responds that he's a professional agent that was hired from the Selectmen to do the legwork pertaining to taxation; the Selectman essentially will have to approve his work. Jeff is sure that they have the power to override him and if they don't like his work, they don't have to keep him. Daniel Daigle continues and states that he's sure that Randy could shed some light on what Fair Market Value is. Jeff responds that Fair Market Value may not be proportional to what you put in. If you do a lousy job, the Market Value may actually go down. Dave Morin mentions that fair market value would have to be defined. How is the labor defined? Dave mentions that the Planning Board would have to define what Fair Market Value is. Vince Vanier includes that the definition would enable people to estimate the labor cost and estimate the cost of material and submit this information as part of the application. Project cost will be the closest they one can get to evaluating Market Value. Gary Dufour states that Market Value is different in Madawaska than other neighboring Towns. Gary gives the scenario that an individual may take a run-down home and put \$300,000.00 worth of material cost and labor making the property beautiful and updated. Randy Tarr, the assessor, may say that if the owner would like to sell this property six months down the road, it will have a Fair Market Value of \$123,000.00. The reason is that the marketing value of all the neighboring properties that have been sold in this area are valued at \$123,000.00. Jeff responds that he could show Gary a building by the lake that has a Fair Market Value of \$20,000.00 and is not even worth that. The Planning Board and audience went back and forth on cost of labor and cost of material.

Dave Morin wanted to shed a little light on Plumbing and Electrical Codes. Generally plumbing and electrical jobs are not closely regulated. He mentions that Plumbers or Electricians have Federal and State regulations that they have to abide by and they can stand to lose their license and fined if they don't. Dave states that they self-police themselves quite well. The State Electrical and Plumbing Inspectors will come around to inspect if a new structure is being built.

Chairperson Vincent Sirois states that a reasonable solution to this matter would be to have the term "Fair Market Value" be defined as "the cost of material and labor". The Board members prefer to use the term "Project Cost" rather than Fair Market Value. Standard labor rates and Standard material rates will apply. The Planning Board discussed that the material and labor rates should be rated by the local area rates. Each landowner could estimate their own project and just go see Bob when the value of the

project becomes more. This would give the homeowner the responsibility of calculating whether they need a permit for their project and, if questioned, be able to verify it. There was discussion among the Planning Board members about project cost and how the standard rates for local carpenters, plumbers, electricians, and masons would be established. They discussed averaging out the rate of three different establishments. Vince Vanier asks whether the definition of “Project Cost” will responsibly cover the taxation and code enforcement. The Planning Board established that the last time that Randy Tarr reevaluated and assessed was in 2010 with a 2007 Real Estate Market Value. Before then, the Town was assessed in 1990. It is understood that reassessment is due in the year 2020. The Planning Board discussed changing the wording in the Article from “Market Value” to “Project Cost” and define what project cost means. They discussed the term “project cost” going into the list of definitions, meaning “local rates for material and labor”. It was verified that this will apply to existing structures, not new structures. Gary Dufour wants to fix the wording to make it clear; he wishes to change the Article to state that it will be applicable to existing structures. The Planning Board discussed the wording further.

Gary Dufour motions that a Public Hearing be held within thirty (30) days to discuss this Article. Vince Vanier seconds the motion; all are in favor.

Gary Dufour motions to accept the proposed changes of the last sentence from “market value” to “project cost” along with new definitions for the terms “renovations” and “project cost”. Tom Schneck seconds the motion. After the Planning Board discusses and clarifies the wording and definitions, all are in Favor.

The proposed change of the last sentence: “The building permit that requires renovation, repairs or maintenance shall not be required if the project cost of the work is \$15,000.00 or less.”

PROPOSED CHANGE TO CODE READS AS FOLLOWS:

No building or other structure shall be erected, moved, added to or externally enlarged without a permit there-for, issued by the Code Enforcement Officer. No building permit shall be issued except in conformity with the provisions of this Code, except after written order from the Board of Appeals. The Code Enforcement Officer shall maintain a public record of all building permits. A permit for which no substantial work has been commenced within six months

shall expire. If the building or part is not substantially completed within two years of the issuing of the permit, the permit shall lapse. It may be renewed upon application. **The building permit that requires renovation, repairs or maintenance shall not be required if the project cost of the work is \$15,000.00 or less.**

Additional Definitions:

Renovations: Repairs and upkeep but do not change the existing footprint.

Project Cost: Project cost will be materials and labor necessary to complete the project. Local cost for materials and labor shall be used regardless of the source of material and labor.

According to Susanne F. Pilgrim from Legal Services Department of Maine Municipal Association, Part two of Article 6, *Grandfathering of Sheds*, cannot be done. Chairperson Vince Sirois reads from the letter sent by her: "Zoning variances are very strictly regulated by state law. A zoning variance can only be granted by the Board of Appeals based on the criteria set out in 30A MRSA 4353. The town cannot force the BOA to grant variances. Therefore, the second article you proposed would not be valid and it should be deleted."

Dave Morin states, "The Town Selectmen do not want to go against the Planning Board or the Board of Appeals." "Whatever you guys decide will stand." Dave feels like the Planning Board is fighting on terminology. He thinks there must be another way to word it. He suggests giving an "After the Fact" permit. Dave continues, "There are two ways to give a variance, one strict and one not-so-strict." Planning Board member, Jeff Albert, responds that if the individual meets the setbacks, all he needs is an "After the Fact" permit. Dave continues: The history that we're talking about is: If a person buys a property in Madawaska that has a shed in the back corner of the property that the prior owner never obtained a permit to build but was put up after the code was installed, he doesn't have the proper setback but has been there for twenty-five (25) years. Couldn't the landowner just keep it there if he had an "After the Fact" permit? Dave states that there are many residents here in the Town of Madawaska that have illegal buildings on their properties. These properties have been there for twenty (20) and twenty-five (25) years. The fact that these are illegal structures it could be an area of contention between neighbors that want to use this as leverage. Dave Morin would like to find a way to prevent neighbors turning on neighbors and wasting the Town's time and money. Contentious neighbors can insist that the Town do something about this structure or the Town will be sued for not enforcing the law. It forces the Town of Madawaska to get involved. Dave Morin states that it is common for people to unknowingly buy a property that has a non-conforming structure on it. Dave Morin suggest an "After the Fact" permit with certain criteria to alleviate potential conflicts

between two neighbors. The Planning Board concludes that the second part of the Article is non-defensible and needs to be revisited at another Planning Board meeting.

Gary Dufour motions to Delete Part Two of Article 6 which refers to the proposed change in the Code Amendments that we are seeking in allowing sheds to be grandfathered in until another meeting where we can define ourselves a little better. Vince Vanier seconds the motion and all are in favor.

The Planning Board discusses this further. There was a suggestion from Gary Dufour that the Planning Board go before the Selectpeople and ask if the Planning Board could have the Town's Attorney review this issue. They want the Attorney's guidance and suggested avenues to enable the Planning Board in making a sound decision on this issue. The Planning Board is not allowed to inquire of MMA. Gary Dufour feels that MMA was designed for the Boards. He feels that all Board members should be able to use all avenues to seek answers and direction to make sound decisions; they shouldn't have to be "babysat" by the Selectpeople.

ARTICLE 7: Review Minutes of Previous Meeting.

Gary Dufour motions to table Article 7 until the next meeting. Tom Schneck seconded the motion and all are in favor.

ARTICLE 8: Other Business

Gary Dufour motions that the Planning Board Chairperson seeks an authority to have unfettered access to MMA and other resources. Jeff Albert seconds the motion and all are in favor.

Dave Morin mentions a tabled Article discussed at the last meeting and wants the Planning Board to reconsider this Article for the next meeting. The Article pertains to a Commercial Zone leading from Gagnon Brook to Frenchville. He would like the Board to revisit this issue and reconsider the current setbacks.

Chairperson Vincent Sirois requests that the issue of the Commercial Zone previously discussed be an Article on the next Planning Board Agenda meeting. Bob Ouellet reminds the Planning Board members that the issue on getting answers concerning the shed should be also discussed at the next meeting. The Minutes tabled this evening will also be reviewed then. It was decided that the next Public Hearing would continue discussion on Article 6 would be on June 27, 2014.

ARTICLE 9: Adjournment

Jeff Albert motions to Adjourn at 7:48p.m. and Vincent Vanier seconds the motion; all are in favor.

