

**BRIDGTON BOARD OF APPEALS
MEETING**

Downstairs Meeting Room

**January 28, 2016
6:30p.m.**

The Bridgton Board of Appeals was called to order at 6:30p.m. by John Schuettinger, Chair. Those in attendance were: John Schuettinger, Chair; Sharon Smith Abbott, Vice Chair; Gregory Jones; Deborah Brusini; Julie Whelchel, Alternate. Absent were: Robert Mawhinney; Marita Wisner, Alternate.

Also present was: Agnieszka A. Pinette, Drummond Woodsum, legal representative for the Town of Bridgton.

Chair Schuettinger reconvened the meeting at 6:30p.m.

Pledge of Allegiance

Appoint Alternate(s) to vote in place of any absent regular member(s) if necessary. No alternates were appointed.

Old Business

CONTINUATION OF DELIBERATION

Administrative Appeal - Planning Board Decision

Applicant: Robert and Rita Tyszka

Property Owner - Douglas S. Holt and Todd Perreault

Project: Bridgton Bottled Gas

Location: 4 Raspberry Lane/Portland Road

Represented by Robert and Rita Tyszka

Recessed on January 7, 2016

Review of DRAFT Decision

Chair Schuettinger said we are here to consider our decision about the appeal submitted by Mr. and Mrs. Tyszka regarding Bridgton Bottled Gas.

Chair Schuettinger said at the Board's request Town staff and legal counsel has prepared a draft decision with respect to the Tyszka's appeal. Has the Board had an opportunity to review the draft document that we received? The Board concurred yes.

Chair Schuettinger said as every knows the Board is acting in its appellant capacity, we held a public proceeding which Mr. and Mrs. Tyszka and others had the opportunity to present legal arguments to the Board for consideration. As per Article XV Section 4 of the Town of Bridgton Site Plan Review Ordinance "The standard of review shall be whether the decision of the Planning Board was arbitrary or capricious, based on error of of law or on findings of fact not supported by substantial evidence in the record. The Board of Appeals

shall have the authority to sustain or reverse a decision of the Planning Board or to remand the matter to the Planning Board for further proceedings." If members of the Board have had an opportunity to review the DRAFT decision are there any questions or proposed revision that the Board wishes to make at this time? Member Brusini said on page 3, Article VII Section 3 in one of the Planning Board meetings there was a lot of discussion regarding traffic, there was one discussion about pedestrian/vehicular interaction that was brought up by Ms. Miller, and my question is, she expressed an opinion about cul-de-sacs and trucks going down cul-de-sacs and basically said you have to be careful if your kids are out there because there is going to be traffic on any of these roads and especially cul-de-sacs at the end. I guess my question is the actual Ordinance says "shall ensure" which tells me that you must be sure that the vehicular and traffic conditions shall not exceed reasonable limits for the neighborhood. Is this different than, because Ms. Miller gave an opinion on this, but is this different than her making a reasonable conclusion. Where does that part get classified for the whole cul-de-sac discussion? Must it require evidence or is the Ordinance written, because it was thought about, something was concluded, it stands? Chair Schuettinger said the applicant, it is his/her job to prove one way or another that they have met this requirement and I don't believe the applicant said anything about it so I don't know if that is considered that they discussed it or not. Attorney Pinette said the Planning Board can use its own personal knowledge regarding the neighborhood to reach findings and conclusions and there is nothing wrong with that. If you are concerned that this issue is substantive enough that there wasn't enough evidence presented by the applicant to prove that matter than this language would capture it. If you think that this issue is, it could be decided by the Planning Board on the basis of its personal knowledge of the neighborhood and the conditions, and the reasonable inferences that the Board may draw from, the evidence that was presented rather than direct them to search for more. Member Brusini said based on what Attorney Pinette and Chair Schuettinger have said I would leave the language as is. Vice Chair Smith Abbott said to Member Brusini are you withdrawing your concern? Member Brusini said yes, it was really a matter of clarification as to whether the information presented to the Planning Board, where could it fall in that category, just because of the way I read this, therefore, I am fine with the statement and the way it is written.

Chair Schuettinger said I have a couple revisions I would like to add. On page 1 revise the last sentence in paragraph 1 to read "Because some of the Planning Board's findings and conclusions are not supported by substantial evidence in the record, we vacate the decision and remand the matter to the Planning Board for further proceedings consistent with this decision". Also on page 8 revise the first sentence in the last paragraph to read "Because some of the Planning Board's findings and conclusions are not supported by substantial evidence in the record, we vacate the Planning Board's decision and remand the mater in order for the Planning to reopen the

public hearing for the purpose of hearing new evidence, limited to the following matters, and to clarify its findings and conclusions with regard to the following review standards:"

Chair Schuettinger said I am not going to read the entire decision but for the benefit of the viewing audience and the attending public I will read portions of the decision document. Georgiann Fleck, Deputy Town Manager, distributed copies of the Board of Appeals Decision to the attending public (copy attached). Following review of the decision Chair Schuettinger said I will entertain a motion.

Member Jones moved that the Planning Board's November 3, 2015 decision is VACATED and REMANDED with instruction to complete site plan review in accordance with the decision. Member Brusini 2nd.
4 Approve / 0 Oppose

New Business - None

Topics for Discussion

A. Other

Chair Schuettinger adjourned the meeting at 6:55p.m.

Respectfully submitted,

Georgiann M. Fleck, Deputy Town Manager
Town of Bridgton