

**OGUNQUIT PLANNING BOARD**  
**PUBLIC HEARINGS and REGULAR BUSINESS MEETING**  
**MAY 29, 2012**  
**PUBLIC HEARINGS**

Mr. Simpson informed the Board and the Applicants that due to the fact that there were only three Board members present any motion would require a unanimous vote in order for it to pass. He offered each of the applicants the opportunity to table their application should they so wish.

Mr. Simpson also pointed out that due to the Town Meeting which will be held on June 12, 2012 the Planning Board meeting originally scheduled to take place on June 11, 2012 has been cancelled. The next Planning Board meeting will be held on June 25, 2012 at 6:00 p.m.

**1. MARK ANASTAS / LIQUID DREAMS – 696 Main Street – Map 10 Block 5.**

Mr. Simpson asked if there was anyone who wished to speak for, or against this application. There being no one the Public Hearing was closed at 6:02 p.m.

**2. JOSEPH LINDSEY – 49 Bittersweet Lane – Map 21 Block 6 – Subdivision – Final Plan Application.**

Mr. Simpson asked if there was anyone who wished to speak for, or against, this application.

Attorney David Ferguson informed the Board that he represents abutters Robert and Barbara Kinsman (14 Bittersweet Lane – Map 21 Block 7-5-632) and Jane Stevens (329 North Village Road – Map 21 Block 13). He noted that the Kinsman's and Ms. Stevens are also holders of rights to use the existing right-of-way currently known as Bittersweet Lane. These abutters are concerned about the impact of the Sonoma Woods Development on Bittersweet Lane.

Attorney Ferguson referred to Mr. Lockman's 14 October 2011 memo to the Board wherein Mr. Lockman noted that Bittersweet Lane was never approved by the Board nor has it been engineered or constructed to Town standards. Attorney Ferguson pointed out that the current Sonoma Woods' plans do not include plans to bring Bittersweet Lane up to Town Standards. He also noted that in October 2011 the developer expressed concern regarding the cost to bring the road up to standards, which implies that the developer acknowledges that Bittersweet Lane is part of this development.

Attorney Ferguson referred the Board to the Minutes of March 26, 2012 wherein the developer agreed that culvert repairs and installations would be completed on Bittersweet Lane prior to Final Approval. He pointed out that as of this meeting that work has not begun.

Attorney Ferguson pointed out that the plans do not include notations of waivers granting relief from complying with Town Standards, in addition Bittersweet Lane is not included in the Sonoma Woods' Street Plan, Storm Water Plan, or the Erosion and Sediment Control Plan all of which are required to be in place for the entire development of which Bittersweet Lane is a part.

Attorney Ferguson submitted to the Board that this plan is incomplete and should go back for further engineering to address the Bittersweet Lane issues. He noted that Bittersweet Lane will be the primary access for the subdivision as well as the residents who currently live there and this is the Board's and the Town's opportunity to ensure that it is developed to Town Standards. This is all the abutters are asking for.

Ken Markley addressed the Board noting that he is the Applicant on this project. He stated that he did not have any of this information, that once again it was not presented prior to the meeting and he suggested it would have been helpful if these concerns had been brought to the Board prior to this meeting, however he understood that comments can be made during a Public Hearing.

Mr. Markley reminded the Board that they had granted waivers from the road standards. He noted that he does have an erosion control plan and a storm water plan from Ross Engineering. Mr. Markley confirmed that Bittersweet Lane is included in the development and that it had been included in the area calculations to determine the project's density. It was agreed that it would be brought up to the Town standards as well as the standards which were waived.

Mr. Markley confirmed that the drainage has not been addressed, and he stated that they have not been allowed access onto the Kinsman property.

Alex Ross, Ross Engineering addressed the Board and referred to his 26 March 2012 Memo to the Board wherein he stated that the existing roadway was inspected and is in good condition, he did recommend that Culverts A and B be renovated. Culvert A is currently buried and requires stone and outlet protection and Culvert B should be lowered by at least one (1) foot. It is the developer's intent to do this work.

Mr. Ross confirmed that he did prepare a storm water drainage study and plan and the Sonoma Woods Subdivision will not impact Bittersweet Lane, and there will be no changes in that area. The Drainage Plan was prepared and everything works well in those areas which will be impacted by construction.

Mr. Markley reiterated that the Storm Water Plan was focused on those areas that will be impacted by the new development. No storm water review was done for those areas which will not be impacted by new construction.

Regarding the work on the culverts, he (Mr. Markley) has no memory of the Board saying the work had to be done prior to Final Approval. He suggested that most construction is done after Final Approval, and he informed the Board that it isn't unusual to finish the roadwork prior to the issuance of the first occupancy permit.

Mr. Markley indicated on the plans where Culverts A and B were located.

Mr. Markley noted that he didn't think the culvert renovations have to be noted on the Final Plans. He thinks it is noted in the Drainage Calculations and other places in the application, and he thinks that having the Board note it and say that it has to be done prior to the occupancy permit is sufficient.

Mr. Lockman responded that he remembers the Board leaving no stone unturned to capture improvements to Bittersweet Lane throughout the review process. He also recalls the March 26<sup>th</sup> memo wherein the Applicant promised to do an offsite improvement of a preexisting situation. Mr. Lockman noted that the Applicant does own the "panhandle" in fee and not as a right-of-way and they have pledged to upgrade it to the same standard which the Board has waived.

Mr. Simpson asked if there was anyone else who wished to be heard. There was no one and the Public Hearing was closed at 6:15 p.m.

**REGULAR BUSINESS MEETING**

**A. ROLL CALL –**

The Roll was called with the following results:

Members Present: Don Simpson (Chair)  
Robert Coles (Vice Chair)  
Jackie Bevins  
Members Excused: Craig Capone  
Also Present: J. T. Lockman, SMRPC (Town Planner)  
Paul Lempicki, Ogunquit Code Enforcement Officer

**B. PLEDGE OF ALLEGIANCE -**

**C. MISSION STATEMENT -** The Mission Statement was read by Mr. Simpson.

**D. MINUTES – May 14, 2012 Public Hearing and Regular Business Meeting.**

**Mr. Coles Moved to Approve the Minutes of the April 23, 2012 Meeting as Submitted.  
COLES/BEVINS 3/0 UNANIMOUS**

**E. PUBLIC INPUT –**

Mr. Simpson asked if there was anyone who wished to be heard on any matter not on this meeting's agenda. There was no one.

**F. UNFINISHED BUSINESS –**

**1. Findings of Fact for: NELLIE LITTLEFIELD INN & SPA / GAZEBO REAL ESTATE LLC – 27 Shore Road – Map 7 Block 104.**

**Mr. Coles Moved to Accept the Findings of Fact for Nellie Littlefield Inn & Spa / Gazebo Real Estate LLC – 27 Shore Road – Map 7 Block 104.  
COLES/BEVINS 3/0 UNANIMOUS**

**2. THE EGG AND I – 501 Main Street – Map 8 Block 4 – Dumpster Screening Waiver Request.**

Mr. Simpson noted that the Board had received a letter from this applicant requesting this matter be tabled to the next meeting.

**Mr. Coles Moved to Table this waiver request to the June 25, 2012 Meeting.  
COLES/BEVINS 3/0 UNANIMOUS**

**3. MARK ANASTAS / LIQUID DREAMS – 696 Main Street – Map 10 Block 5 – Design Review and Site Plan Review for a post 1930 structure. Application to**

**increase an existing deck, install a set of exterior stairs, and install two new doorways, and convert a portion of the existing building into a café/restaurant.**

Mr. Simpson noted that this application involves a mixed use business with a Type 2 restaurant.

**Mr. Coles Moved to Approve the Design Review for MARK ANASTAS / LIQUID DREAMS – 696 Main Street – Map 10 Block 5.  
COLES/BEVINS 3/0 UNANIMOUS**

**Mr. Coles Moved to Approve the Site Plan Review for MARK ANASTAS / LIQUID DREAMS – 696 Main Street – Map 10 Block 5.  
COLES/BEVINS 3/0 UNANIMOUS**

**4. JOSEPH LINDSEY – 49 Bittersweet Lane – Map 21 Block 6 – Subdivision – Final Plan Application. Ten (10) Lot Subdivision of 18.4 Acres in the Farm District. Sketch Plan Approved on 11-28-2011. Preliminary Plan Approved on 3-26-2012.**

*(Mr. Simpson received agreement from Mr. Markley and Attorney Ferguson that this application would be moved to the end of the meeting so as to expedite the other, smaller applications. For continuity the recorded discussion will be documented here.)*

Mr. Simpson summarized that the issues raised during the Public Hearing were: Roadway Waivers, Storm Water Plan, and Drainage.

Attorney Ferguson responded that the issue for the abutters is that Bittersweet Lane is not included in the Street Plan, the Storm Water Plan, or the Erosion and Sediment Control Plan.

Mr. Simpson responded that this has been reviewed in lengthy detail and that those three issues have been addressed.

Mr. Markley agreed that all three of the issues have been discussed and he stressed that this will be a very nice subdivision. The roadway will be safe and all of the public officials have agreed to the plans. They will put in a fire pond which has been designed to provide adequate access by the fire trucks. He noted that it is unfortunate that sometimes there is an abutter who consistently brings up information at the last minute. He asked the Board for Final Approval.

Mr. Simpson responded that the road waivers were granted, the Storm Water Plan was submitted and it was for the Sonoma Woods Development not Bittersweet Lane, and there is documentation regarding the drainage ditches.

Mr. Coles confirmed that the Conservation Commission has also offered multiple recommendations and comments.

Mr. Simpson referred to the Conservation Commission's 20 March 2012 memo.

Mr. Lockman responded that Bittersweet Lane has been discussed at length. The developer is developing lots that access the Sonoma Woods Road, which comes off of Bittersweet Lane. Bittersweet Lane itself is not being renovated but the Applicant agreed that the first two culverts on Bittersweet Lane will be fixed. Mr. Lockman noted that they are not particularly big problems which is why the amount of work is not necessary to show on the plans. He suggested

the Board include a condition of approval that the Bittersweet Lane culverts be repaired as per the correspondence stamped by Alex Ross dated 26 March 2012. Mr. Lockman noted that there has never been any promise to rebuild Bittersweet Lane. He noted that it has been there for many years, it is not in the center of the right-of-way, and there are all sorts of irregularities about that road, however Bittersweet Lane will remain and it is Sonoma Woods which involves all the waivers. The Storm Water Plan is for the Sonoma Woods portion of the site and doesn't effect the Kinsman or Stevens properties.

Mr. Simpson agreed.

Mr. Lempicki agreed as well and suggested it's time to approve it.

Mr. Lockman suggested any motion include language that the improvements to the culverts on Bittersweet Lane and Sonoma Woods Lane be completed prior to the issuance of a building permit or occupancy permit for the first building, or another specific timeframe.

Mr. Markley noted that none of the water from construction will go through either of the Bittersweet Lane culverts. These culverts only drain the water on Bittersweet Lane, and the Sonoma Woods' construction will not effect them.

Mr. Markley agreed that the roadwork would be completed prior to the first occupancy permit and no longer than thirty (30) days after the approval date of the plan.

Mr. Simpson asked for clarification

Mr. Markley responded that this would give him ninety (90) days from the approval date to do the culverts.

Mr. Lockman asked when the Sonoma Woods Road improvements would be done. He suggested only one building permit would be issued before the entire road is complete.

Mr. Lempicki pointed out that there is already a house on the first lot and that house is ready for an occupancy permit now.

Mr. Lockman responded that he was talking about new construction.

Mr. Markley responded that three occupancy permits seems like a reasonable number given that there is already a house on site which is ready for an occupancy permit. Before the issuance of the third occupancy permit the Sonoma Woods Road has to be complete.

Mr. Lockman summarized that before the second new house is occupied all subdivision improvements will be completed.

Mr. Markley agreed.

Mr. Coles Moved to Grant Final Approval for JOSEPH LINDSEY – 49 Bittersweet Lane – Map 21 Block 6 – Subdivision with the following two conditions: that within ninety (90) days of Final Approval the culverts A and B on Bittersweet Lane will be repaired, and all subdivision

improvements (road and drainage) must be completed prior to the issuance of the occupancy permit on Lot One and two (2) of the houses on Lots 2 through 10.

Mr. Simpson called for discussion.

Ms. Bevins asked if this is how it is usually done.

Mr. Lockman agreed that this is the best approach and that this will make things clear. He also noted that the Applicant has supplied the Town with a performance guarantee for \$30,015 and he will not get this money back until the work is complete.

Mr. Lempicki agreed.

Joseph Lindsey informed the Board that typically they do not put gravel down until construction is complete. He also informed the Board that he made an attempt with the Kinsmans to do the improvements and they refused. He stated that Dig Safe informed him (Mr. Lindsey) that they were refused access to the Kinsman's property twice on Friday (May 25, 2012).

Mr. Lempicki asked how the applicant will do the work if he is not granted access.

Mr. Simpson asked for clarification.

Mr. Lindsey responded that he is talking about the Kinsman's property not Bittersweet Lane. He (Mr. Lindsey) was going to lower the Kinsman's culvert first, however Dig Safe was turned away.

Mr. Lindsey stated that the correct way to do it is to lower the culvert on the Kinsman property first then he would lower his culvert on Bittersweet Lane. A week ago he marked out the whole property for Dig Safe however when On Target came out the Kinsmans turned them away. He (Mr. Lindsey) will lower his part and the Kinsman's can lower their part themselves.

Mr. Lockman responded that this is a matter between neighbors and is not something the Board should get involved with.

Mr. Simpson expressed concern that if the Applicant isn't granted access he won't be able to complete the work the Board is requiring him to do.

Mr. Markley responded that the Applicant owns Bittersweet Lane including Culverts A and B and they will have them both repaired within ninety (90) days, and he reminded the Board that there is a motion on the floor.

Mr. Simpson asked if there was any further discussion.

Mr. Markley responded – none.

Mr. Simpson restated Mr. Coles' motion:

**Mr. Coles Moved to Grant Final Approval for JOSEPH LINDSEY – 49 Bittersweet Lane – Map 21 Block 6 – Subdivision with the following two conditions: that within ninety (90)**

**days of Final Approval the culverts A and B on Bittersweet Lane will be repaired, and all subdivision improvements (road and drainage) must be completed prior to the issuance of the occupancy permit on Lot One and two (2) of the houses on Lots 2 through 10.**  
**COLES/BEVINS 3/0 UNANIMOUS**

**5. BERNARD GELBER – 33 Shore Road – Map 7 Block 105 – Design Review of a Post 1930 structure. Application to replace wood clap board with vinyl siding.**

Gary Woods, representative for Mr. Gelber presented the Board with a sample of the siding, and he confirmed that the color will be very similar to what is on the building now.

The Board members agreed that they would prefer not to see vinyl, however the decision to use vinyl is ultimately the Applicant's.

**Ms. Bevins Moved to Approve Design Review for BERNARD GELBER – 33 Shore Road – Map 7 Block 105.**  
**BEVINS/COLES 3/0 UNANIMOUS**

**6. Correspondence dated May 10, 2012 from Durward W. Parkinson, Esq. on behalf of his client R. W. Scanlon, LLC regarding possible division of Beach Street property (13, 25, and 27 Beach Street - Tax Map 7 Block 72).**

Leah Rachin, Attorney from Bergin and Parkinson addressed the Board as Mr. Scanlon's representative. She noted that, as a response to the Board's April request for an affidavit they have been provided with a draft affidavit for review.

Attorney Rachin noted that, in the past, this property has been subject to a great deal of litigation with the ultimate result being that two separate parcels were merged and now, for business reasons, the Applicant is seeking to split them. A recent survey has confirmed that all frontage requirements are met.

Mr. Simpson responded that given the history of litigation involving this property he (Mr. Simpson) has put in a request to the Ogunquit Town Manager asking if the Town Attorney should review this recent submission. He has not received a response from Mr. Fortier and he asked if the Applicant would be agreeable to tabling this discussion to the next meeting so that the Town has time to submit all the paperwork to the Town Attorney for review and comments.

Mr. Lockman noted that normally the splitting of a lot isn't something the Planning Board reviews however this is an unusual case. There was a Site Plan for the shop "Spoiled Rotten" which is why the Board requested an affidavit for recording at the Registry of Deeds to document the history of this property.

Mr. Coles noted that this action would effectively modify the original Site Plan Review.

Mr. Lockman responded that the Betty Doon and the Booth Theater are both such old commercial developments that the Code Enforcement Officer has been unable to find records of how they were originally approved.

Ms. Bevins pointed out that the Affidavit does not contain all of the tenants, specifically Michael Fogerty is missing.

Attorney Rachin responded that she would look into it and she confirmed that the Board's concern is that all of the tenants are named in the affidavit. Attorney Rachin agreed that she has no issue with a delay so that the Town Attorney can review everything.

Mr. Simpson agreed and noted that this matter would be revisited by the Board at the next meeting, on June 25, 2012.

**G. NEW BUSINESS –**

- 1. ANDREW MIGLIORINI – 237 Main Street – Map 7 Block 126 – Design Review for a pre-1930 structure. Application to remove and remodel windows and doors, remove vinyl siding and replace with hard plank.**

Mr. Simpson noted that this property does fall within the review process of the Ogunquit Historic Preservation Commission, however the Commission did not have a quorum and they did not offer an opinion.

Mr. Migliorini informed the Board that the café on the second floor would be operated in the same manner it always has. He does not have specific plans for the first floor yet and should the use change he will come back before the Board for a Site Plan Review / Change of Use. He confirmed that all currently proposed changes are entirely cosmetic.

**Mr. Coles Moved to Approve the Design Review for ANDREW MIGLIORINI – 237 Main Street – Map 7 Block 126.**

**COLES/BEVINS 3/0 UNANIMOUS**

**H. CODE ENFORCEMENT OFFICER BUSINESS – None**

**I. OTHER BUSINESS –**

Mr. Markley provided a mylar of the final plans for Sonoma Woods Subdivision, which the Board members signed. Mr. Markley was informed that he needed to file said mylar with the York County Registry of Deeds and provide the Town with two paper copies which include the Register's Seal.

**J. ADJOURNMENT -**

**Mr. Coles Moved to Adjourn at 7:10 p.m.**

**COLES/BEVINS 3/0 UNANIMOUS**

Respectfully Submitted

Maryann Stacy  
Planning Board Recording Secretary

*Approved June 25, 2012*