

Board of Appeals
Public Hearing
Meeting Minutes of February 3, 2022
(Meeting held in person at Readfield Town Hall & via ZOOM)

Board of Appeals Members: William (Will) Gagne-Holmes (Chair), Peter Bickerman (Vice Chair), Clif Buuck, Holly Rahmlow, John Blouin, Fran Zambella, Henry Whittemore

Others Attending: Eric Dyer (Town Manager), Chip Stephens (CEO), Kristin Parks (Town Clerk), Kristin Collins (Planning Board Attorney), Matt Nazar, Bob Zeurker, Greg Durgin, Jackie Drouin, Milton Wright, Robert Bittar, Leah Hayes, William Buck, Roland Cote, Phyllis Cote, Jack Comart, Paula Clark, Karen Bickerman, Karen ?

Meeting called to order at 6:00 pm by Will. Tonight's meeting to consist of approval of January 13, 2022 meeting minutes and holding a public hearing with respect to the Administrative Appeal of Safe Space Meeting House (SSMH) from the November 3, 2021 Decision of the Planning Board denying the SSMH land use application concerning 26 Mill Stream Road.

Motion made by Henry to approve the minutes of January 13, 2022 as presented, **second** by Clif. **Vote** unanimous

Will went over the order of the hearing and explained that because the Board of Appeals was acting in an appellate capacity those speaking were limited to argument based on the law or the evidence that was considered by the Planning Board. No new evidence could be presented at the appeal hearing.

Robert Bittar stated he was speaking on behalf of Leah Hayes of SSMH (*connection with Bittar/Hayes was in and out so hard to understand all that was spoken at times*). He feels there are a lot of areas up for discussion and wants to consolidate them for discussion. His biggest issue is with the Resource Protection Act; stated that it was already approved when the Town's Dam Project was done years ago and says there are documents to back this up. Robert also stated that the parking has been approved; again stated there are documents to back this up, but if he has to he will eliminate parking spaces if cutting down trees is an issue.

Leah Hayes of SSMH stated that there is a 10 page report from the Department of Environmental Protection (DEP) that approves some use of the property but stated that it's not included in the hearing record. Will Gagne-Holmes stated that the Appeals Board is unable to accept this document if not included in submitted documents. Peter Bickerman stated that they do have the easement agreement in the record.

Mr. Bittar next spoke disputing the need for a sidewalk adjacent to Mill Stream Road. Concerns on the way information was received regarding the sidewalk. He stated he received a statement

regarding 26 Mill Stream Road from Fire Chief Lee Mank that said the sidewalk was not an issue and then said that Lee Mank later submitted a revision that nullified the decision. Peter Bickerman stated that the December 04, 2021 letter from Lee Mank was included in the packet but not the revision that was mentioned.

Robert Bittar responded to issues of concern of the parking lot and stormwater runoff, wetland protection criteria and water quality management. He now proposes 35 parking spaces instead of 65 in his statement. He argued that the Readfield Union Meeting House has spaces for 12 cars with no issues.

Next Robert Bittar spoke regarding the proposed activities and the Land Use Ordinance (LUO) issues. He stated that there is a document in the record from Town Manager Dyer that identified the many uses that were possible but never discussed the impossible. Robert feels Town Manager Dyer is a representative/agent for the Planning Board and has delayed the process (abuse of process) in various ways. Board Chair Gagne Holmes stated that this argument was not relevant to the issues under consideration in this appeal.

Will Gagne-Holmes asked if anyone on the Board of Appeals feels they should be recused from tonight's discussion/progress – Unanimous response of no. SSMH party feels Clif Buuck should recuse himself as he was the CEO at one point and feels that it is unfair; an argument was made when filing the appeal. Peter Bickerman sees no conflict of interest between Clif's previous role as Interim CEO and his ability to fulfill his current role on the Board of Appeals. Clif doesn't know the applicants; Leah Hayes involvement with 26 Mill Stream Road. Clif stated there was a stop work order prior to 2010. As the Interim CEO from December 2020 to May 2021 he reviewed most recent SSMH application for completeness with a copy of his findings placed in the Planning Board records as an FYI. Clif doesn't feel he is partial/personal in this process. Henry Whittemore sees no conflict.

Motion made by Will Gagne-Holmes that the Board of Appeals vote down any recusal of Clif Buuck, **second** by Fran Zambella. **Vote:** Unanimous, abstained by Clif Buuck.

No one else in attendance see's any other recusals to be mentioned.

No more arguments/comments from Robert Bittar and Leah Hayes of SSMH.

No abutters or public arguments/comments.

Next: Questions for Planning Board on their views of the laws. Paula Clark (Planning Board Chair), Jack Comart (Planning Board Vice-Chair) and Kristin Collins (Planning Board Attorney) all present at meeting.

In response to questions from Peter Bickerman, Planning Board Chair Paula Clark confirmed that 26 Mill Stream Road contains a legal but non-conforming structure which has been approved for use as a single-family dwelling. A portion of the structure is in the Resource Protection Zone near the stream and for setback reasons, makes it non-conforming. A Community Center/Club is not a permitted use in the Resource Protection Zone per the LUO. In reference to Fact & Findings document; Page4, B.1; reviewed by Peter.

Paula Clark stated that the proposed change of use would have a greater impact and that each site review criterion must be met for Planning Board approval. She stated that there are three (3) broad categories for Planning Board Types of Standard; 1) Change of use of non-confirming structure, 2) set of site review criteria and 3) standards of review and performance.

Robert Bittar asked Paula to clarify; spoke about the non-conforming barn from years ago and that it was destroyed as it was too close to the stream. He feels that the house is not in any way invasive to the Resource Protections Area.

Leah Hayes argued how the space was approved for the town's use of a park but not approved for SSMH for such use.

Oral argument closed at 7:20 pm by William Gagne-Holmes. No public comment input.

Board of Appeals Deliberations:

- #4: Section V(C)(4); Financial Burden on Town: Clif spoke that the Planning Board stated the road/sidewalk would be a financial burden on the Town; they didn't receive any evidence of cost, any input from the Road Commissioner or Committee, or offer the applicant an option to pay. In conclusion he feels it was assumed by the Planning Board to be a financial burden without providing further evidence. Peter stated that the sidewalk/pad information from Fire Chief lacked substantial evidence in the record to get to this conclusion. Holly feels that the lack of specifically from SSMH; left things hanging and not enough detail in planning. Henry spoke that the email exchange with the Fire Chief made it very clear and provides evidence on emergency evacuation concerns down the road during certain times of the year; make it hard for emergency personal/vehicles to pass safely. William Gagne-Holmes stated that there was a lot of email exchange from the Fire Chief and abutters/neighbors on the increase of foot/vehicle traffic and being a big concern. Clif Buuck still feels it doesn't prove financial burden to the town although a reasonable person could probably reach that conclusion. Peter Bickerman feels that the town traffic and life/fire issues show substantial evidence.
- #3: Section V(C)(2): Site Plan Review Criteria: Henry Whittemore feels there are issues of vagueness and nuance. C.5 & C.6 he feels the applicant may have been able to fill in more of the required information.

- #11: Section V(C)(11): Life and Fire Safety: Clif Buuck spoke that it “may be imposed” – no discussion if it would be.
- Peter Bickerman spoke that the plan as it exists is non-conforming and if changed would make it more non-conforming.
- #1: V(A): Requested Use: Consensus of the Board in conclusion that SSMH is unable to use house as a community center as it is prohibited in the Rural Residential District. Henry Whittemore and William Gagne-Holmes spoke on item A.5 and town mailers: speculative and evidence persuasive.
- #12: A(D)(15): Article 7 Applicable Criteria: Henry Whittemore spoke on issues of lighting and safety concerns mentioned in this section and how they were not addressed.
- #6: V(C)(7): Wetlands: Clif Buuck spoke that the applicant didn’t provide documents from Cobbossee Watershed District or DEP Plans for storm water and that the Planning Board didn’t ask for a Phosphorous Report from the applicant as they could have to better prove the case.

William Gagne-Holmes asked the Appeals Board, if any member felt that the Planning Boards decision was arbitrary, capricious or an abuse of discretions. Consensus of the Board was no.

Appeals Boards to vote on the 14 Findings of the Planning Board:

Four questions to be asked/to be voted on:

- Is there substantial evidence in the record supporting the Planning Board’s decision on this particular issue?
- Do you think the Planning Board made an error of law in its decision on this particular issue?
- Was the Planning Boards decision on this particular issue arbitrary, capricious or an abuse of discretion?
- Did the Planning Board correctly decide on the particular issue?

Deliberations closed at 7:51 pm by William Gagne-Holmes.

Voting on the 14 Findings of the Planning Board:

Holly Rahmlow responses asked by William Gagne Holmes:

1. Section V(A):

- Is there substantial evidence in the record supporting the Planning Board’s decision on this particular issue? Yes
- Do you think the Planning Board made an error of law in its decision on this particular issue? No
- Was the Planning Boards decision on this particular issue arbitrary, capricious or an abuse of discretion? No
- Did the Planning Board correctly decide on the particular issue? Yes

2. Section V(B):
 - Is there substantial evidence in the record supporting the Planning Board's decision on this particular issue? Yes
 - Do you think the Planning Board made an error of law in its decision on this particular issue? No
 - Was the Planning Boards decision on this particular issue arbitrary, capricious or an abuse of discretion? No
 - Did the Planning Board correctly decide on the particular issue? Yes
3. Section V(C)(2):
 - Is there substantial evidence in the record supporting the Planning Board's decision on this particular issue? Yes
 - Do you think the Planning Board made an error of law in its decision on this particular issue? No
 - Was the Planning Boards decision on this particular issue arbitrary, capricious or an abuse of discretion? No
 - Did the Planning Board correctly decide on the particular issue? Yes
4. Section V(C)(4):
 - Is there substantial evidence in the record supporting the Planning Board's decision on this particular issue? Yes
 - Do you think the Planning Board made an error of law in its decision on this particular issue? No
 - Was the Planning Boards decision on this particular issue arbitrary, capricious or an abuse of discretion? No
 - Did the Planning Board correctly decide on the particular issue? Yes
5. Section V(C)(5):
 - Is there substantial evidence in the record supporting the Planning Board's decision on this particular issue? Yes
 - Do you think the Planning Board made an error of law in its decision on this particular issue? No
 - Was the Planning Boards decision on this particular issue arbitrary, capricious or an abuse of discretion? No
 - Did the Planning Board correctly decide on the particular issue? Yes
6. Section V(C)(7):
 - Is there substantial evidence in the record supporting the Planning Board's decision on this particular issue? Yes
 - Do you think the Planning Board made an error of law in its decision on this particular issue? No

- Was the Planning Boards decision on this particular issue arbitrary, capricious or an abuse of discretion? No
 - Did the Planning Board correctly decide on the particular issue? Yes
7. Section V(C)(11):
- Is there substantial evidence in the record supporting the Planning Board’s decision on this particular issue? Yes
 - Do you think the Planning Board made an error of law in its decision on this particular issue? No
 - Was the Planning Boards decision on this particular issue arbitrary, capricious or an abuse of discretion? No
 - Did the Planning Board correctly decide on the particular issue? Yes
8. Section V(C)(13):
- Is there substantial evidence in the record supporting the Planning Board’s decision on this particular issue? Yes
 - Do you think the Planning Board made an error of law in its decision on this particular issue? No
 - Was the Planning Boards decision on this particular issue arbitrary, capricious or an abuse of discretion? No
 - Did the Planning Board correctly decide on the particular issue? Yes
9. Section V(C)(15):
- Is there substantial evidence in the record supporting the Planning Board’s decision on this particular issue? Yes
 - Do you think the Planning Board made an error of law in its decision on this particular issue? No
 - Was the Planning Boards decision on this particular issue arbitrary, capricious or an abuse of discretion? No
 - Did the Planning Board correctly decide on the particular issue? Yes
10. Section V(C)(17):
- Is there substantial evidence in the record supporting the Planning Board’s decision on this particular issue? Yes
 - Do you think the Planning Board made an error of law in its decision on this particular issue? No
 - Was the Planning Boards decision on this particular issue arbitrary, capricious or an abuse of discretion? No
 - Did the Planning Board correctly decide on the particular issue? Yes
11. Section (V)(C)(20):
- Is there substantial evidence in the record supporting the Planning Board’s decision on this particular issue? Yes
 - Do you think the Planning Board made an error of law in its decision on this particular issue? No

- Was the Planning Boards decision on this particular issue arbitrary, capricious or an abuse of discretion? No
- Did the Planning Board correctly decide on the particular issue? Yes

12. Section V(D)(15):

- Is there substantial evidence in the record supporting the Planning Board's decision on this particular issue? Yes
- Do you think the Planning Board made an error of law in its decision on this particular issue? No
- Was the Planning Boards decision on this particular issue arbitrary, capricious or an abuse of discretion? No
- Did the Planning Board correctly decide on the particular issue? Yes

13. Section V(D)(17):

- Is there substantial evidence in the record supporting the Planning Board's decision on this particular issue? Yes
- Do you think the Planning Board made an error of law in its decision on this particular issue? No
- Was the Planning Boards decision on this particular issue arbitrary, capricious or an abuse of discretion? No
- Did the Planning Board correctly decide on the particular issue? Yes

14. Section V(D)(19):

- Is there substantial evidence in the record supporting the Planning Board's decision on this particular issue? Yes
- Do you think the Planning Board made an error of law in its decision on this particular issue? No
- Was the Planning Boards decision on this particular issue arbitrary, capricious or an abuse of discretion? No
- Did the Planning Board correctly decide on the particular issue? Yes

Fran Zambella, William Gagne-Holmes, John Blouin and Henry Whittemore vote exactly the same as Holly Rahmlow.

Clif Buuck votes the same as Holly Rahmlow except for #7 (vote below):

Section V(C)(11):

- Is there substantial evidence in the record supporting the Planning Board's decision on this particular issue? No
- Do you think the Planning Board made an error of law in its decision on this particular issue? Error of Process
- Was the Planning Boards decision on this particular issue arbitrary, capricious or an abuse of discretion? A bit arbitrary, not enough factual support/proof.

- Did the Planning Board correctly decide on the particular issue? The particular issue was not correctly decided.

Peter Bickerman votes the same as Holly Rahmlow except for #4 & #13 (votes below):

Section V(C)(4):

- Is there substantial evidence in the record supporting the Planning Board’s decision on this particular issue? No, substantial evidence problem.
- Do you think the Planning Board made an error of law in its decision on this particular issue? No
- Was the Planning Boards decision on this particular issue arbitrary, capricious or an abuse of discretion? No
- Did the Planning Board correctly decide on the particular issue? The particular issue was not correctly decided.

Section (V)(D)(15):

- Is there substantial evidence in the record supporting the Planning Board’s decision on this particular issue? Yes
- Do you think the Planning Board made an error of law in its decision on this particular issue? Yes, error in law.
- Was the Planning Boards decision on this particular issue arbitrary, capricious or an abuse of discretion? Yes
- Did the Planning Board correctly decide on the particular issue? The particular issue was not correctly decided.

William Gagne-Holmes asked each Appeals Member for their overall decision from the Planning Board findings Decision on page 7: “Based on the above findings of fact and conclusions of law, the Planning Board finds that the relevant approval standards have not each been satisfied, and hereby denies the application by motion and vote 7 to 0”.

Motion made by John Blouin that each member votes on SSMH’s appeal from the Planning Boards decision, **second** by William Gagne-Holmes. **Discussion:** Each member either approving or denying SSMH appeal. **Vote:** Approve: 0. Deny: 7 (All Appeals Board members); SSMH appeal denied by unanimous vote.

Next steps: William Gagne-Holmes to draft a written decision and Appeals Board to meet on February 17, 2022 for formal vote on the written decision and public notice to be posted.

Motion made by John Blouin that the Board of Appeals will meet as soon as possible to consider to adopt a written decision which the chair will be authorized to sign, **second** by Fran Zambella. **Vote** unanimous.

Peter Bickerman mentioned that under state law if anyone has grounds and standing to appeal they must do so to Superior Court within forty-five (45) days from tonight's meeting regardless of when the written decision is issued.

Motion made by Clif Buuck to adjourn the meeting at 8:12 pm, **second** by Holly. **Vote:** Unanimous.

Minutes submitted by Kristin Parks, Town Clerk.

Minutes approved 02/17/2022