

**Town of Otisfield
Board of Appeals Meeting Minutes
Town Office Annex
August 9, 2016**

Applicants: Robert and Jennifer Becker

Attendance: Members present were: Chair- Janet Douglass, Vice Chair - Don Verrill, Recording Secretary - Sharon Matthews, and Anne Pastore, (Absent – Alternate Don Mixer & Marianne Izzo-Morin)

Richard St. John, - Code Enforcement Officer

Tanya Taft – Secretary

1. **Call to Order:** The meeting was called to order at 7:00 PM. *Board had a quorum.

2. **Secretary's Report:**

A. Meeting Minutes from July 19, 2016. *Motion to accept minutes. DV/AP – Unanimous.

3. **Applicants have filed an application** and paid the required fee on Friday July 15, 2016 at 10:10 am (within the required deadline of July 21), appealing the decision by the Otisfield Planning Board for approval of a proposed Wedding Barn application site plan submitted by Tammy Rae for 439 Gore Road. Notices of this hearing were printed in the Lewiston Sun Journal and Advertiser Democrat, and posted at the Town Office.

4. **Administrative Appeal:** Summary: Robert and Jennifer Becker, of 442 Gore Road, in a request received on July 15, 2016, are appealing the 6/21/16 decision of the Otisfield Planning Board that approved the development of the proposed Wedding Venue. They state that they believe "the approval was based on a misinterpretation of the relevant ordinance" and that "several provisions of the ordinance were not met and/or misinterpreted". Specifically, they refer to the following Sections of Building Codes and Standards (adopted by the town of Otisfield in its 2009 edition with amendments) applied by the Planning Board to reach its decision. Specific sections of the code referred to in this application are:

Section 5.3.f.2 Vehicular and Pedestrian Access: Claim there is an existing safety problem that would be made more dangerous with added traffic related to gatherings at the Wedding Barn.

Section 5.a.3 Noise: Health and safety would be compromised by noise generated by gatherings at the Wedding Barn, especially during the night when neighbors are trying to sleep.

Section 5.19 Water Supply: Sufficient water supply and adequate provision for waste disposal not assured (includes concerns about subsurface sewage disposal potential not being adequate for large groups of attendees).

Section 5.a.22 Scenic Location and Views: A parking lot and two drives (one to house and one to parking lot from road). Outdoor lights could also impact the scenic view. Any impact also equates obstruction of scenic views in the applicants' view.

5. **Conflict of Interest-** Inquiry as to presence of direct or indirect pecuniary interest held by any Appeal Board member(s) must take place at this meeting. *MIM recused herself as she will be working with The Wedding Barn and this is a conflict of interest. No other conflicts are stated.
6. **Standing-** Determination as to the authority of the Board and Standing of the applicant to appeal reveals that this Board has limited jurisdiction in this case and will review the decision of the Planning Board in an appellate capacity in keeping with the Town's ordinance. This means that we are not starting over from the beginning and conducting a full review of this application nor the Planning Board's decision of approval. We will make our decision based upon the record that was before the Planning Board and we will not be taking any new evidence. This Board can only reverse the decision of the Planning Board if it determines that the decision was clearly contrary to specific provisions in the Town's ordinance or if the decision was unsupported by substantial evidence in the record. The Board will review and consider all evidence (facts) and conclusions used by the planning board in its deliberations and conclusions.

7. Discussion & Comments:

DAVID KALLIN, ATTORNEY FOR THE BECKERS: During the PB Process many abutters, including the Beckers, expressed frustration that the applicant hadn't submitted enough information to demonstrate that converting an old farm house, one located very close to other houses in a residential area, into a wedding venue for 140 guests including late night and weekend operation could be done consistent with the requirement of the Site Plan Ordinance. The Planning Board did go against the ordinance. They may have done it inadvertently but they were against the Ordinance in two important ways 1. Waived many of the submission requirements that were necessary for them to be able to make the conclusions that they made; and 2. They considered new factual information submitted by the applicant without reopening the Public Hearing to admit it into evidence and allow rebuttal evidence and cross examination regarding that newly submitted evidence. Evidentiary Hearing Requirements under the Site Plan Review Ordinance, Section 4(c) (2) Public hearings by the Board shall be conducted according to the procedures outlined in Title 30-A, M.R.S.A., Section 2691, Subsection 3(A), (B), (C), (D), and (E). Every party has the right to present the party's case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct any cross-examination that is required for a full and true disclosure of the facts. The PB waived more than half of the submission requirements, The Public Hearing was held April 19th and closed on April 19th. The Beckers were not allowed to submit any more evidence. The Board did not reopen the public hearing. It allowed very limited comment. After April 19th, the abutters were not allowed to comment or allowed to submit any more evidence. Applicant was voicing concern over only having one hearing. Site Plan Review Ordinance 6A Waiver Requirements cited. If additional information comes in, the hearing is supposed to get reopened to hear new information. PB waived a lot of criteria. The applicant should show something that gives them something to look at, but the PB waived it. The Board never found extraordinary and unnecessary hardship and didn't identify special circumstances that would allow this applicant to waive submission of the materials that every other Applicant for Site Plan approval must submit. The Board was under obligation to follow the Ordinance, yet it didn't do so in granting of the waivers. The engineer study was submitted late and shows a difference in grade from the parking lot and the road. 8-12% grade. They waived the submission requirements and that's

the problem. No one flagged there was an 8-12% grade. **J. DOUGLASS:** We need to move on. **J. BECKER:** We want to be heard, and this is what is frustrating. **J. DOUGLASS:** We are not looking at new evidence, and we should move on. **D. KALLIN:** We are trying to explain there was no new evidence because it was waived. **OTISFIELD ATTORNEY- PHILLIP SAUCIER:** It's best you give everyone a chance to state their case. **A. PASTORE:** read about noise levels in the Site Plan Review Ordinance. Otisfield does not have a Noise Ordinance. It is a two sentence section of the ordinance, that is what we have to follow. **CHARLES F. WALLACE, JR:** For background; Wallace is a Professional Engineer registered in the states of Maine, Massachusetts and New Hampshire. The town does not have a standalone noise ordinance, but it does have a performance Standard in the Site Plan Review. That is known as the performance standard. The PB required that a noise study be prepared. The applicant then retained a person who was not a licensed engineer to perform the study. A performance standard can be quantified as long as you know what the background is. The person who prepared the study was not qualified. Yet used the term Engineer in his criteria. It's a fundamental violation of the PB requirement and state of Maine law. There was an error in the PB procedure. Assuming the person knew what they were doing, it would mean they followed a protocol, a quantitative guideline. It wasn't a standard, it was a guideline. The only state standard is found in the DEP site Law, under chapter 375, control of noise. This party did not do the work in accordance with the protocol. Didn't even use an instrument that is suitable for sound outdoors. The consequence is that a study was performed and has no meaning or impact on the neighbors. Those standards were not followed. **D. KALLIN:** Vehicular, Pedestrian access. The parking lot must meet certain dimensional standards; the board inexplicably found them inapplicable. They didn't waive the items they found that they were N/A. **CHARIDY JOHNSON, 556 GORE ROAD, OXFORD RESIDENT:** The one thing that's frustrating for me, is when they were going through the ordinance about the protected scenic view, in the ordinance it says plan should not have a negative impact. We raised that signs, and a parking lot would have an impact on that view. The PB just said, it means to obstruct the view. When I look up the meaning of the word obstruct, it does not mean that. **J.DOUGLASS:** It was my understanding that that information was covered and there were no lights at the street. **JULIE GORDON, 24 GORE ROAD:** I feel like the road is already a dangerous road, it bypasses and connects 2 major roads. It feels dangerous for me to go get my mail sometimes. My kids live on this road and it's dangerous. Just having a business of this size, the amount of people and the times of day and the potential risk of drinkers is a concern. **D. KALLIN:** Regarding the finding that "there are no obstructions to the Scenic view" but then we find that "trees and shrubs have been planted strategically along the Gore Road property line to buffer the sound. **CEO:** The scenic views are identified in the Comprehensive Plan and this is not identified at this location. **D. KALLIN:** Fire Chief supported the idea of a Fire Pond. One of the conditions says to follow what Fire Chief has recommended. F.O.F. states Fire Pond should be created on the property. **KAREN TURINO:** The F.O.F. refers you to the Fire Chiefs letter. (Fire Chief Letter read out loud **CEO:** The report submitted to the PB from Fritz was discussed and read by CEO. "The effort and cost would not be worthwhile" That letter was submitted July 19th. **OTISFIELD ATTORNEY- PHILLIP SAUCIER:** Explaining to the BOA members that what the applicants are arguing is that the letter submitted was being considered. It is not part of the appeal. **J.DOUGLASS:** Does anyone else wish to speak? No one raised their hands.

Section 5.3.f.2 Vehicular and Pedestrian Access: Claim there is an existing safety problem that would be made more dangerous with added traffic related to gatherings at the Wedding Barn.

Discussion: BOA members read through PB F.O.F. and what was waived. Waived means it didn't need to be filed. All agree they show locations of 2 driveways, (1) to parking lot and (1) to wedding barn and guests. Gore Road, adequate capacity. Documented by BOS 12/15 letter that the road can handle that traffic. They cited it had the right site distance and turning lanes. They measured it for the Site access. All agree the facts

support their decision. **PUBLIC:** How was the BOS letter decided? **A.PASTORE:** The Gore Road is an arterial road that can have thousands of cars a day traveling on it, 75 more for a wedding will have no significant impact. *Motion that the PB decision on this section was supported by substantial evidence and not contrary. AP/DV – Unanimous.

Section 5.19 Water Supply: Sufficient water supply and adequate provision for waste disposal not assured (includes concerns about subsurface sewage disposal potential not being adequate for large groups of attendees).

Discussion: The water supply for the portable restrooms will be supplied by the company. The business (Royal Restrooms) will deliver restrooms with water already in them and they will be taken away with refuge in them. KT: The FOF states that the applicant will pursue options including drilling a well. If it is found not sufficient water in the area, there is a way to find sufficient water. **R. BECKER** the deeded well is on another property and it goes through my property. **J.DOUGLASS:** Tammy Rae has proof that she can get water. **K.TURINO:** the applicant stated at our meeting “as a last resort” she would exercise drilling that well. It’s not cost effective for her to do that, so she will explore other options first.

*Motion that the PB Decision on section 5a.19 water supply, was supported by substantial evidence. DV/SM – Unanimous.

****Section 5A.20 Sewage Disposal: (THIS WAS ADDED AFTER)*

Discussion: *Motion that the PB Decision on this section was supported by substantial evidence. DV/SM – Unanimous.

Section 5.a.22 Scenic Location and Views: A parking lot and two drives (one to house and one to parking lot from road). Outdoor lights could also impact the scenic view. Any impact also equates obstruction of scenic views in the applicants' view.

Discussion: The PB concluded that there were no obstructions. There was a question brought up earlier on the accuracy on that and the degree of sloping. The Ordinance is very short in what it says. It was stated in the F.O.F. that the lighting will be facing the other way. There will be (2) unlit signs. The parking lot will be below the road by 12 feet. If you’re on the road you are up higher and can still look out. There is a plan to put landscaping in to make it aesthetically pleasing. No lights will be facing the road. There are no street lights. Site walk was done on April 5th for the board to view the area of concern. **CEO:** The scenic views are identified in the comprehensive plan and this is not identified at this location it is further down the Gore Road. *Motion that the PB Decision on this section was supported by substantial evidence in FOF. SM/AP – Unanimous.

Section 5.a.23 Noise: Health and safety would be compromised by noise generated by gatherings at the Wedding Barn, especially during the night when neighbors are trying to sleep.

Discussion: **CHARLES F. WALLACE JR:** This is his 51st year doing noise studies. Including wedding barns. June 12th there was an acoustician report conducted. As mentioned earlier, it was not done correctly or with the right instruments. The person who performed the test did it erroneously. **BOA:** It says in the F.O.F. that there were 35 testing sites. Applicant stated in the April 19, 2016 meeting that the windows don’t open. Speakers will turn away from the road and venue will close at 10:00 PM. A wall mounted decibel reader will be placed in the hall. **J.DOUGLASS:** We have new information that we can’t use because the PB didn’t have

that information available. They did not know he was not a licensed Engineer. There is no noise ordinance. **OTISFIELD ATTORNEY- PHILLIP SAUCIER:** It won't adversely affect neighbors. She is making attempts to lessen the noise and it's not in the Ordinance. **A.PASTORE:** She is putting in double pane windows. She's doing a decibel reader in her barn. **CHARLES F. WALLACE JR:** Sound pressure level is what he measured. It is not designed for use outdoors. That instrument is used for setting up music inside a building. When measuring sound outdoors, the microphone must be fitted with a windscreen. This instrument was used outdoors. Conclusions were drawn on the numbers that he read, but they were inaccurate. **LINDA ANNANCE; 428 GORE ROAD:** I had initial concerns, but I was home the day they did the noise test, with my windows open, I had to really listen to try and hear it. The minute I put the TV on, you couldn't hear the noise. **A.PASTORE;** I live across the street from Bell Hill Church and they have concerts there and I can't hear their music. **BECKER** Each location is different. **OTISFIELD ATTORNEY- PHILLIP SAUCIER:** There is no Noise Ordinance and what the Site Plan mentions is "unreasonable hours" in the 2nd sentence. BOA members all agree that she plans to be done by 10:00 PM and that is subjective as far as unreasonable hours. **K.TURINO:** The testing was done without double windows and she plans to put double windows in. **The** test came in under State guidelines. The applicant was going to require a lower level than what was tested. **BECKER:** outside noise is not being assessed at all. **D. VERRILL:** I don't know what the State standards are, but I can hear the Fire Works, the speedway, etc. from my home and I believe fireworks can continue up until 12:30 am. **J.DOUGLASS:** The PB is not mandated to use any noise standard. **A. PASTORE:** Would like to reiterate that our Site Plan Ordinance does not require a Sound Study. **D. KALLIN** But the Planning Board requested one. **A. PASTORE** Yes they did, and while that was a good idea it is not required in our Ordinance. The ordinance states sound must be muffled at "unreasonable hours", Tammy stated all events will end by 10:00pm to me that is not an unreasonable hour. **K.TURINO:** The sound study was to give us an idea. We did not have any idea what noise would be created. So we thought having something would give us an idea. There was nothing that jumped out at me. We never used precise measurements.

*Motion that the PB Decision on this section was supported by evidence in FOF. DV/AP – (3) agree (1) abstain JD.

****5a4a. Parking Requirements of 2,3,4,5. : Requesting we look at these and determine if they are applicable.*

Discussion: **STAN BRETT:** I don't see that what he's bringing up is part of the appeal. The PB didn't waive this, they just found it was N/A. **TAMMY RAE'S ATTORNEY - ANTHONY TRASK:** As a BOA member you have the right to not look at what's in front of you. The Becker's Attorney is asking you to make a decision on something new. You can entertain it if you would like, but you don't need to. **K.TURINO:** we didn't feel the driveways needed to be connected. There were 2 separate parking areas and a path to get them there. A plan was included in those minutes. It was discussed in the minutes and it was seen in the site walk and papers submitted. **H. OLSEN:** They could turn around in the parking lots and that was our concern.

*Motion that the PB decision of N/A on these sections were supported by evidence in the F.O.F. DV/AP – Unanimous.

FIRE POND DISCUSSION: **D. KALLIN** The PB expressly states the concern and construction of the Fire Pond. **OTISFIELD ATTORNEY- PHILLIP SAUCIER:** This is an interpretation issue, not in your jurisdiction. **D. KALLIN:** I feel this is to be interpreted. You are trying to get them to weigh in on what the

condition was. **OTISFIELD ATTORNEY- PHILLIP SAUCIER:** I don't see the boards' role on this. They are only to decide if there was something erroneous on this appeal by the PB. The CEO can make this recommendation later.

8. Decision: J.DOUGLASS: Do you deny or support Robert and Jennifer Becker, Appellant's request to overturn the Planning Board's decision to approve, with conditions as noted, in their final notice of approval for the Wedding Barn projected proposed by Tammy Rae?

*Motion that we are denying the appeal. AP/DV – Unanimous.

*This decision may be appealed to Superior Court pursuant to the Maine Rules of Civil Procedure.

9. Upcoming Dates:

A. Board of Appeal Meeting: Board will meet on September 1, 2016 @ 5:30 PM.

10. Adjournment:

With no further business, the meeting was adjourned at 9:30 PM. AP/DV - Unanimous.

Respectfully submitted,
Tanya Taft, Secretary.

Approved by: _____

Janet Douglass -Chair

Otisfield Board of Appeals

Approved on: September 1, 2016