

**PLANNING BOARD REGULAR MEETING, March 22, 2023 AT 8:03 PM**

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**Members present:** Robin Severance, Alan Hipps, Chris Maron, Mary Lou Fitzgerald Elisha Bartlett, Ken White, (Robert King -- Arrived at 7:15), and (Daniel Berheide/ alternate -- Departed meeting at 9:02 pm).

**Guests Present:** George Hainer, Keith Hoffnagle, Matthew Brankman, Catherine Simmer, Jean Kirejczyk, Patricia French, MaryJane Viens, Steven Viens, Cynthia Ford-Johnston, David Johnston, Taylor Haskins, Josh Kingzack, Rose Chancler, Michael Tyler (son), Samuel Sherman (phone), Dorinda Sherman (phone), Joseph Trincerì.

Hoffnagle public hearing, Wednesday, March 22, 2023 at 7:00 pm closed at 8:02 pm prior to the regular meeting.

Chairwoman Severance: Opened the Regular Meeting at 8:03 p.m. Do we have a resolution to approve the minutes from the February 22, 2023 meeting?

Daniel Berheide: Please remove my name as a voting member for the February 22, 2023 minutes.

Ken White: I make a motion to approve the minutes for the Regular Meeting on February 22, 2023 with correction.

Chris Maron: I second that motion.

- **Resolution 2023-12 Approval of the Regular Meeting Minutes on February 22, 2023**  
**Resolved:** To approve the Regular Meeting minutes of February 22, 2023, with correction.  
**Moved by:** Ken White  
**Seconded by:** Chris Maron  
**In Favor:** Robert King, Elisha Bartlett, Ken White, Mary Lou Fitzgerald, Chris Maron, Alan Hipps, and Chairwoman Robin Severance.  
**Opposed:** None

Chairperson Robin Severance: Our first project is a minor division for Thomas Phuriphan, 34 & 43 Loch Hame Way, Tax Map #76.4-1-23.100 and #76.4-1-24.000.

Narrative: Mr. Phuriphan owns approximately 105 acres divided by Loch Hame Way. Mr. Phuriphan would like to divide the property along the road. He will be keeping 43 Loch Hame Way, Tax Map #76.4-1-24.000, which is approximately 4.4 acres, with his residence. He would like to sell 34 Loch Hame way, Tax Map #76.4-1-23.100, which is approximately 6.1 acres. Please see the attached map to see the area outlined in yellow that will be maintained by Mr. Phuriphan and the area outlined in green will be sold. There are no building rights in question. The APA has already signed off.

Chris Maron: I move approve this project as a minor division.

Alan Hipps: I'll second that motion.

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- **Resolution 2023-13 Approval of the Minor Division of the Phuriphan Property**  
**Resolved:** To approve the minor division of Thomas Phuriphan, 34 Loch Hame Way, Tax Map #76.4-1-23.100 and 43 Loch Hame Way, Tax Map #76.4-1-24.000.  
**Moved by:** Chris Maron  
**Seconded by:** Alan Hipps  
**In Favor:** Robert King, Elisha Bartlett, Ken White, Mary Lou Fitzgerald, Chris Maron, Alan Hipps, and Chairwoman Robin Severance.  
**Opposed:** None

Chairwoman Robin Severance: We need to discuss the Hoffnagle Special Permit project.

Chris Maron: Moves we approve the project.

Discussion: The Board discussed the findings of the public hearing. The Planning Board is not allowed to interpret the law. They need clarification of “discontinued” in the Towns Land Use Law. They need clarification on when the one-year clock starts. Past practice and precedent need to be considered. In the past the Codes officer has used the sale date as the one-year mark for non-conforming use properties. If they pass this or don’t pass this today, an Article 78 can be filed by either side, allowing the court to make the determination. More information is needed for the Planning Board to proceed.

Alan Hipps: It is prudent to have more information to move forward. If we did this right in the past, that is a good thing, and if we didn’t, we need to move forward doing it correctly. We need guidance to move forward.

Matthew Brankman: Thanked everyone for their time and excused himself from the meeting.

Elisha Bartlett: How did we arrive at the sale date as being the abandonment of the use?

George Hainer: I’m not sure, that was just the precedent that was set. I’ll give you the example of a business owner who needs to close down their business due to illness and now the building needs to be sold, but it has already been closed down for over a year before the sale. That means the owner’s entire investment is gone because they cannot sell the building with the ability to house another business, since his business had already been closed for a year. This gives the benefit to the owner of the non-conforming use building. The town wants to see business succeed.

Elisha Bartlett: One point is that the fire department built and occupied a new building. They can have two buildings, that is not for us to determine. If this is referred, we need to consider that, as well.

Chris Maron: We have precedence.

George Hainer: Article 78 would allow the court to decide and the court is more impartial.

Chris Maron: The court would have a more binding decision. I move we approve and let them file an Article 78.

Elisha Bartlett: That can be appealed. It would be wise to refer to the attorney and wait for a response.

Alan Hipps: Doing our due diligence and following the law is best. Referring to the Zoning Board of Appeals is what the law says and referring to the attorney is due diligence.

Taylor Haskins: Will Sam (Sherman) need to recuse himself?

Group replied: Yes, he would have to.

Alan Hipps: Read aloud from the Land Use Law criteria for recusing one's self or family from the Planning Board and Zoning Board of Appeals. Noting he is not the authority, but it is clearly defined.

Elisha Bartlett: Would the time clock pause for the applicant while we decide? This will take time to decide and this is a time sensitive issue.

The Board decided they need to:

- Refer to the Zoning Board of Appeal for interpretation of a timeframe for "discontinue". We need to know when discontinued starts. We also have past precedent to consider. Land Use Law 4.012 interpretation of the beginning of the year.;
- Contact the attorney, Joel Russel, whom wrote the law to request clarification of "discontinue" in our law and include his remarks to the Zoning Board of Appeals;
- Does the time clock pause for the applicant until we make the determination?
- Letter of opposition from the attorney representing Samuel and Dorinda Sherman.

Chris Maron: Can we move this along a little and approve based on findings?

Elisha Bartlett: We cannot because we adjourned the public hearing.

Alan Hipps: I move we refer to the Zoning Board of Appeals with the items we listed.

- Refer to the Zoning Board of Appeal for interpretation of a timeframe for "discontinue". We need to know when discontinued starts. We also have past precedent to consider. Land Use Law 4.012 interpretation of the beginning of the year.;
- Contact the attorney, Joel Russel, whom wrote the law to request clarification of "discontinue" in our law and include his remarks to the Zoning Board of Appeals;
- Does the time clock pause for the applicant until we make the determination?

- Letter of opposition from the attorney representing Samuel and Dorinda Sherman.

Ken White: I'll second that motion.

Chris Maron: I'll abstain.

- **Resolution 2023-14 Hoffnagle Special Project Referral to Zoning Board of Appeals**  
**Resolved:** To refer to the Zoning Board of Appeal for interpretation of a timeframe for “discontinue”. We need to know when discontinued starts. We also have past precedent to consider. Land Use Law 4.012 interpretation of the beginning of the year.; Contact the attorney, Joel Russel, whom wrote the law to request clarification of “discontinue” in our law and include his remarks to the Zoning Board of Appeals; Does the time clock pause for the applicant until we make the determination? and include the letter of opposition from the attorney representing Samuel and Dorinda Sherman.  
**Moved by:** Alan Hipps  
**Seconded by:** Ken White  
**In Favor:** Robert King, Elisha Bartlett, Ken White, Mary Lou Fitzgerald, Alan Hipps, and Chairwoman Robin Severance.  
**Opposed:** None  
**Abstain:** Chris Maron

Chris Maron: I see the reasons for this referral, but this whole delay tactic and we lose the use of the building. I'm sorry this Board decided not to move forward.

Alan Hipps: The Law anticipated a problem and set guidelines.

Chairwoman Robin Severance: Our next project is for OMNM, LLC. Taylor your name is on this for a Tavern.

Taylor Haskins: Yes. We did not intend to come before the Planning Board with the Tavern first, but with the liquor license application process, that is how it worked out. We have 20 spaces for parking and an agreement with Paul Spooner for access and additional parking.

Chairwoman Robin Severance: Remember when you first came to us. I asked you to be a good neighbor. Now, I'll ask you are being a good neighbor?

Taylor Haskins and Josh Kingzack: Yes.

Josh Kingzack: The neighbor behind has concerns about water. We will be addressing any concerns in the spring.

Joe Trincerì: You did park a trailer on my front lawn much longer than anticipated and made ruts when insulating the building. I have concerns about a tavern. I have played at bars and bartended. They are loud.

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Josh Kingzack: We are completely aware and have told Joe we will get his front lawn cleaned up as soon as spring arrives.

Chairwoman Robin Severance: Please give us a brief description of your project.

Taylor Haskins: We are looking to open a 1200 sqft. tavern, "The Hopper" with a small menu. The building is being insulated from the outside in, which was part of the plan from the start of construction. This will preserve the beautiful space on the interior of the building. The walls will also be sound insulated. We will be floating the interior walls which means there will be space between the exterior wall and the interior wall to absorb sound. I am a musician and media producer, so I am aware of containing noise. There will not be an issue with sound. We will have parking along the side and four spaces out front. There will be no parking on the Trinceri side of the building. There will be one entrance and one exit flow to traffic. We think this is going to be the perfect gathering space for community. Gather in a beautiful space for food and drink.

Chairwoman Robin Severance: This building sits on an access road, that means it can NEVER be blocked.

Josh Kingzack: We understand that fully. We will put signs up and try our best to keep people from parking where they shouldn't park.

Discussion: Lengthy discussion about parking, parking options, right-a-way agreements, additional parking, acquiring written agreements and deeded right-a-way agreements. The OMNM, LLC already has a written, deeded right-a-way with Paul Spooner granting access to the parking on the north side of the building. Paul has also given permission for a foot path to the additional parking behind the Westport Hotel. The Westport Hotel is in process of being sold. The OMNM, LLC has spoken with the potential new owner for access to additional parking. This is possible with the new owner. There are other options we are exploring and working on for the future. We currently have enough spaces for our project and I have an engineer working on a plan for business and parking. I will have that for the Planning Board next month. On the south side of the building, they are looking at putting in a median to stop parking and dictate the flow of traffic.

Chairwoman Robin Severance: Read allowed the Application for Commercial Uses, Supplemental Information Request.

Elisha Bartlett: The site plan only shows 18 parking spaces.

Taylor Haskins: There are 8 spaces out front, 4 on each side.

Elisha Bartlett: How soon will you have agreements in writing?

Taylor Haskins: Within a year or two. Right now we are in compliance with Westport Law for parking required spaces. It will be tight, but we are abiding and making efforts to expand for ourselves. Parking concerns us, as well. If people can't park, they won't come to the businesses.

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Elisha Bartlett: There is a discrepancy between your application and the site plan of how many (on-site) parking spaces you will be able to provide.

Taylor Haskins: These are the in progress plans, not the final plans.

Elisha Bartlett: I don't see anything on the site plan for trash/ refuse. Do you have a plan and management?

Taylor Haskins: There is a concrete pad out back that we are planning to put a small dumpster. We are looking to compost as much as possible to local farms.

Mary Lou Fitzgerald: What other activities?

Taylor Haskins: Music, rented space, prepared food market, and gym.

Mary Lou Fitzgerald: Question for the Planning Board with parking, the road, traffic, the neighborhood, and children. This is not just their problem; it is our problem too. We need to make sure this is safe.

Discussion: Continued to discuss parking and the community at large; safety concerns; an inability to control every situation; responsibility of people at large.

Taylor Haskins: A repaired sidewalk would help. The sidewalk has deteriorated and a clear walking path would be beneficial.

Robert King: There is outdoor seating on the site plan. Will there be protection for this outdoor seating from the cars?

Taylor Haskins: Yes, fencing.

Chairwoman Robin Severance: There are some things we still need to see.

Alan Hipps: How long before we have an updated site plan?

Ken White: Is the application complete or incomplete?

Elisha Bartlett: There is some missing information. There are missing parking spaces, the outdoor seating isn't on the site plan, and a refuse location. We could deem it complete with conditions.

Ken White: I'll make a motion to deem this application complete with the conditions we receive an updated site plan to include additional parking, outdoor seating, and a refuse location.

Chris Maron: I'll second that motion.

- **Resolution 2023-15 Deem the OMNM, LLC Special Permit Application Complete with the condition of an updated site plan.**  
**Resolved:** To deem the OMNM, LLC, 6779 Main St, Tax Map #66.56-1-22.002, Special Permit Application complete with the condition of an updated site plan to include additional parking, outdoor seating, and a refuse location.  
**Moved by:** Ken White  
**Seconded by:** Chris Maron  
**In Favor:** Robert King, Elisha Bartlett, Ken White, Mary Lou Fitzgerald, Chris Maron, Alan Hipps, and Chairwoman Robin Severance.  
**Opposed:** None

Chris Maron: I move we schedule a public hearing for the OMNM, LLC Special Permit Application.

Mary Lou Fitzgerald: I'll second that motion.

- **Resolution 2023-16 Schedule a Public Hearing for Wednesday, April 19, 2023 at 7:00 pm for the OMNM, LLC Special Permit.**  
**Resolved:** To schedule a public hearing for the OMNM, LLC, 6779 Main St, Tax Map #66.56-1-22.002, Special Permit Application on Wednesday, April 19, 2023 at 7:00 pm.  
**Moved by:** Chris Maron  
**Seconded by:** Mary Lou Fitzgerald  
**In Favor:** Robert King, Elisha Bartlett, Ken White, Mary Lou Fitzgerald, Chris Maron, Alan Hipps, and Chairwoman Robin Severance.  
**Opposed:** None

Chairwoman Robin Severance: Other business?

Elisha Bartlett: Our meetings have been uncomfortable and we need to look at our process. The board needs to consider the civility towards one another. I can only speak for myself, but there have been times I would like to get up and leave, I'm not the only one and I can only speak for myself. We are not representing ourselves well, we are not representing the town well and we are not serving our community well. We need to refer to Roberts Rules of Order for how to conduct ourselves. I don't want to discuss this now, I just want us to think about it. We should take this time to reflect, and take this as a learning lesson to better ourselves, that we owe to ourselves for the amount of time and dedication we're putting in, and to the public. I'll leave it at that.

Alan Hipps: Well said.

Ken White: I move we adjourn.

Chris Maron: I'll second that motion.

- **Resolution 2023-17 Adjournment**

**Resolved:** To adjourn the meeting at 9:41 pm.

**Moved by:** Ken White

**Seconded by:** Chris Maron

**In Favor:** Robert King, Elisha Bartlett, Ken White, Mary Lou Fitzgerald, Chris Maron, Alan Hipps, and Chairwoman Robin Severance.

**Opposed:** None

Respectfully submitted,

Catherine L. Simmer, Secretary