

BACKGROUND

This case involves the Administrative Appeal by Gerald Haines and Francisca Morant (hereinafter the "Appellants") from a March 19, 2007 Notice of Violation issued by Code Enforcement Officer to Twin Brooks Camping Area, LLC (hereinafter "Twin Brooks"). A public hearing was held over the course of two Zoning Board Hearings, one on May 23, 2007, the other on June 27, 2007. The Appellants and Twin Brooks filed final submissions on July 11, 2007 and the Board began deliberating on July 25, 2007. The Board's deliberations continued on August 6, 2007, at which meeting the Zoning Board voted to sustain the Appeal in part and to deny the Appeal in part, all in accordance with the Findings of Fact and Conclusions of Law as set forth below and further to order the Code Enforcement Officer to issue a new Notice of Violation to Twin Brooks in accordance with the Findings of Facts and Conclusions of Law.

FINDINGS OF FACT

1. The 1968 Ordinance regarding campgrounds imposed a 100-foot side and shore setback for campsites.
2. The applicable setback from the high water mark under the Town's Shoreland Zoning Ordinance is 100 feet. Appellants argued that an additional 75-foot setback from the wetlands located closest to Sites 6, 7, 8 and 9 on the September 11, 2006 "Master Plan of Twin Brooks Camping Area" prepared by Albert Frick Associates, Inc. (the "2006 Master Plan") is applicable. The Board finds that the additional 75 foot setback is not applicable because it is not a wetland associated with a great pond. The Board found credible the Maine Department of Environmental Protection's determination that the additional 75-foot setback from the wetland was not applicable. See definitions of "freshwater wetlands" and "wetlands associated with great ponds and rivers."
3. Sites 9, 12 and 13 as shown on the 2006 Master Plan fall within the 100-foot side setback and therefore non-conforming campsites.
4. The majority of Site 7, two-thirds of Site 6 and a small portion of Site 8 are within the 100-foot setback from the normal high waterline of Little Sebago Lake and therefore are nonconforming campsites. A photograph from 1963 submitted by Twin Brooks shows some sites in existence in the area which would correspond to Sites 8, 14 and 13 as shown on the September 11, 2006 Plan. The aerial photographs submitted by the appellants were difficult to read and inconclusive as to location of these campsites.
5. Several witnesses stated that they camped at Twin Brooks in the mid to late 1960s and into the 1970s and, in several instances, beyond. They consistently referenced a large rock which corresponds with the vicinity of Site 14 on the 2006 Master Plan. The Board finds this testimony compelling with respect to the existence of Campsites 6, 7, 8, 13 and 14 as having been in existence prior to 1968.

6. Twin Brooks has the burden of proof to show that campsites falling within the 100-foot side setback or the 100-foot setback from the normal high waterline, were in existence prior to 1968, and continuously used since that time, in order for them to be legally nonconforming campsites.

7. Twin Brooks failed to meet its burden of proof with respect to Site 9 and it is determined that it was not in existence in 1968. None of the campers could specifically recall whether Site 9 was in existence prior to 1968, and the testimony of the Appellants and others, particularly Mr. Woodbury, together with the photographs submitted by the Appellants tended to show that Site 9 was recently created.

8. Twin Brooks failed to meet its burden of proof with respect to Site 12 and it has found that it was not in existence prior to 1968. None of the campers could specifically recall whether Site 12 was in existence prior to 1968, and the testimony of the Appellants and others, particularly Mr. Woodbury, together with the photographs submitted by the Appellants tended to show that Site 12 was recently created.

9. Based on the photographs submitted and from the testimony from the campers who had camped at Twin Brooks in the mid to late 1960s, and testimony of representatives of Twin Brooks, it was determined that Site 13 was in existence prior to 1968.

10. Twin Brooks met its burden of proof with respect to Sites 6, 7 and 8 and the Board finds that they were in existence prior to 1968. Based on the photographs submitted and from the testimony from the campers who had camped at Twin Brooks in the mid to late 1960s, it was determined that Sites 6, 7 and 8 were in existence prior to 1968.

11. Based on the testimony of the campers and representatives of Twin Brooks, Site 6, 7, 8 and 13 have been in continuous use since 1968.

12. Based upon the testimony of the Appellants and others, particularly Mr. Woodbury, and the photographs submitted by the Appellants, it is determined that Lot 13 has been expanded by removal of vegetation and placement of fill. The Town of Gray's Ordinance prohibits the expansion of a nonconforming use of land without Planning Board approval. Section 402.9.B. Twin Brooks should apply for an after-the-fact approval for the expansion of Site 13, or return it to the state it was in prior to its becoming nonconforming.

13. The Board determines that the addition of utilities and water to the campsites to be an expansion or change of the character of the campsites. It is unclear whether Sites 6, 7 and 8 have utility and water, but to the extent that they do, that is an unlawful expansion of a nonconforming use of land. Section 402.9.B. and Section 12D of the Shoreland Zoning Ordinance.

14. Section 402.28-2D requires a 25-foot screened area around a campground. "All campgrounds shall be screened from adjacent land areas by a continuous landscaped area not less than twenty-five (25) feet in width containing evergreen shrubs, trees, fences, walls or any combination which forms an effective visual barrier of not less than six feet in height." From the

site visit and the testimony and photographs of the Appellants and others, particularly Mr. Woodbury, this requirement has not been met. Vegetation has been removed and fill has been placed within the 25-foot screening area. Twin Brook needs to ~~re-vegetate~~ this 25-foot screen area in accordance with Section 402-28-2D.

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15. The Appellants allege that there has been cutting of trees in the Shoreland Zone in violation of Section 150(2)(a). Photographs presented by the Appellants were inconclusive in determining whether there had been clearing in violation of Subsection O. Although some of the photographs tended to show that there had been clearing of vegetation, it was difficult to come to that conclusion, other than that which has already been determined with respect to Sites 9, 12 and 13. The fence that appears in more recent photographs makes one focus on the fence, and not on the vegetation that had been seen in photographs taken prior to the installation of the fence. Photographs were also taken at different angles at different times of year which made it difficult to come to a conclusion. The September 2006 after-the-fact permit for the removal of hazard trees and the Maine Department of Environmental Protection's determination that there had not been a violation of clearing of vegetation within the shoreland zone were found to be compelling. Therefore, it is determined that the Appellants did not meet their burden of proof with respect to this allegation.

16. From the photographs submitted by the Appellants and the site walk conducted by the Board, Sites 9 and 12 have been filled without a permit pursuant to Section 15(P)(1) that Twin Brooks should be ordered to remove the fill on those campsites, and the road to the extent it was extended to serve Sites 9 and 12.

17. The filling of the existing road to the campsites was routine repair and maintenance and therefore in compliance with Section 12(B)(2), other than stated in the preceding paragraph. The Board did not find compelling evidence that there had been improper filling with respect to Site 6, 7 or 8.

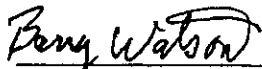
18. The appellants allege that Twin Brooks has been operating a marina in violation of Section 14 of the Shoreland Zoning Ordinance. The marina is defined by Ordinance as "a business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for boats, and which may also provide accessory services such as boat and related sales, boat repair and construction, indoor and outdoor storage of boats and marine equipment, boat and tackle shops and marine fuel service facilities." There was testimony that campers can put in their boats at the campground and have access to the lake, however, such uses would be incidental to the campground business. Therefore, the use of the docks and access to the water by campers does not meet the definition of a marina and the use is not in violation of the Shoreland Zoning Ordinance.

19. The appellants allege that the Twin Brooks operated as a campground in 2006 without a valid State campground license in violation of 402.28-2. Evidence was presented that the campground has since obtained a temporary campground license for the 2007 season. The Board finds that the campground did violate the Ordinance by operating the 2006 season without a valid State campground license.

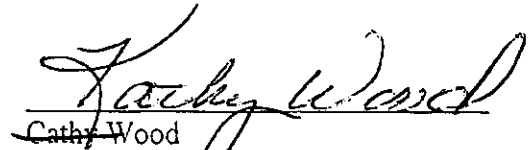
20. The appellants allege that Twin Brooks failed to obtain necessary electrical and plumbing permits for campsites. Photos submitted at the June 27, 2007 Hearing and the site walk showed that there were electrical drops at Sites 9 and 12 as shown on the 2006 Master Plan. As indicated above, those sites need to be removed and any associated electrical plumbing drops also need to be removed. It was unclear whether Sites 6, 7 and 8 have electrical or plumbing drops but as has been indicated above, to the extent there are electrical and water facilities at Site 6, 7 and 8, they should be removed. The Code Enforcement Officer should also determine whether other sites in the campground have electrical and water permits and have Twin Brooks apply for after-the-fact permits for the utility drops outside of the Shoreland Zone.

CONCLUSION

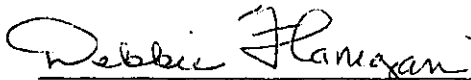
The administrative appeal of Mr. Haines and Ms. Morant is sustained in part and denied in part in accordance with the above Findings of Fact and Conclusions. The Code Enforcement Officer should issue a new Notice of Violation in accordance with the above Findings and Conclusions, Section 402.32B. All references to campsites, unless otherwise specified, are referred to as the September 11, 2006 Master Plan as submitted by Twin Brooks.



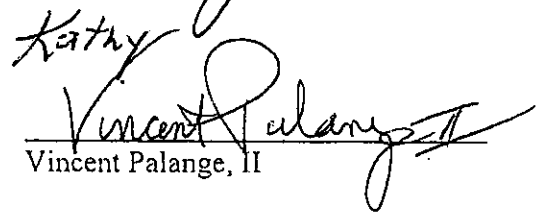
Barry Watson, Chair



Cathy Wood



Debbie Flanagan Flanigan



Vincent Palange, II

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Kyle Coolidge