

ITEM 1 - ROLL CALL

Present: Steve Beckert – Chairman, Jeff Duncan, Greg Whalen, Dennis Lentz, Melissa Horner – Alternate, and Christine Bennett – Alternate.

Also present: Kate Pelletier, Planning Assistant.

Absent: Larry Bouchard (excused).

Voting members: Steve Beckert, Jeff Duncan, Dennis Lentz, Greg Whalen and Melissa Horner – Alternate.

ITEM 2 – PLEDGE OF ALLEGIANCE

ITEM 3 – MOMENT OF SILENCE

ITEM 4 – REVIEW AND APPROVE MINUTES, AS NEEDED

There were no minutes reviewed.

ITEM 5 – REVIEW “NOTICE OF DECISION” LETTERS, AS NEEDED

There were no Notice of Decision letters reviewed.

ITEM 6 – PUBLIC APPLICATIONS OR PLANNING BOARD BUSINESS TO BE CONSIDERED

A. 10-minute public input session

There was no one from the public who wished to speak.

B. Application for a Shoreland Zoning permit to construct a 3' X 30' seasonal gangway, a 6' X 40' residential pier, one (1) 6' X 20' and one (1) 10' X 20' float at 28 Starboard Cove Road. Owner/applicant is Cindy Camp (mailing address: 28 Starboard Cove Road, Eliot, Maine 03903). Property can be identified as Map 70, Lot 25 and is located in the Rural Zoning District and Limited Residential Shoreland Zoning District. (PB17-5)

First Hearing: May 16, 2017

Site Walk: None required

Mr. (Zach) Taylor, Pickering Marine, was present as the applicant's representative.

Mr. Taylor said that this is an application for a new docking structure; that there was a previously-existing docking structure and there are some pilings in the ground, so, we are intending to put it in the same location. He added that there is an existing access-way in place that cuts through the woods; that we will remove what little debris is left and

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locate the dock in approximately the same location without having a real reference for the old configuration. He added that that is why we are filing for a full natural resource protection act permit (NRPAP). He said that the basic design is similar to other salt water docks we've developed in the area, keeping the fixed pier closer to shore, and going with a mostly seasonal structure with a 35-foot gangway; that that landing float helps push it out to get the 10'X20' float to that breaking point; that there's no point in going out any further because that's when it really flattens out and, at low tide, the float will be in the mud. He saw, this past winter, the large chunks of ice parked on shore and he believes that was the eventual downfall of the old dock. He said that we will have the standard float stops installed to keep the floatation drums off the mud at low tide, per the DEP and ACE request. He added that this has been submitted to the DEP, ACE, Maine Historic Preservation Commission (MHPC), submerged lands, and the five Indian tribes, as well. He said that we have gotten feedback from some of the tribes, the MHPC, and DEP, and everything is positive, so far; that the DEP and ACE reviews are active, at this point.

Ms. Bennett asked why he was filing a full NRPAP.

Mr. Taylor said that it is required; that if the whole dock was still there and we were replacing it in-kind, then it could have been a permit-by-rule. He added that he believed that, in Maine, it is 18 months that the dock has been in disarray and disuse. He said that there are some pilings still there.

Ms. Bennett asked if they extended further than what you are going to be creating with a fixed dock or is it about the same.

Mr. Taylor said that we honestly don't know; that he tried to find old pictures and he knew they would need a full permit so he didn't dig very deep into the old structure.

Mr. Duncan asked if Mr. Taylor knew when the original dock was put in and when it was destroyed to the point it was no longer being used.

Mr. Taylor said that he wasn't sure; that there was part of the floating dock still down there; that the pilings are old so he imagines it's an older dock, possibly in the early '60's.

Mr. Duncan asked if it was his intent to pull all those and replace with new and modern supports.

Mr. Taylor said yes.

Mr. Lentz asked if there was no road frontage to this lot.

Ms. Pelletier said that, no, there isn't; that it is a legal non-conforming lot but that really doesn't have anything to do with the pier, itself; that there is a ROW.

Mr. Beckert asked if the applicant was missing anything on the checklist.

Ms. Pelletier said that the only thing, on page 3, was a side elevation drawing and, then, a front or rear elevation drawing. She added that, other than that, it's just standard State permits when they are approved, reflectors, and permits.

The PB agreed there was no need for a site walk.

The Public Hearing was scheduled for June 20, 2017.

There was some discussion regarding limits to the number of piers allowed and that there are no limits.

C. Continued review of proposed revisions to Planning Board By-laws (4-19-17 draft).

Mr. Beckert asked that hard copies of the sample by-laws from other towns be printed out.

Ms. Pelletier said that she would do that for the whole PB.

On page 3 f) i), "Each regular member and alternate member is..." was changed to "All members are..."; a) Regular Meetings iii) changed "Chairman" to "Chair".

On page 4, e) Site Walks ii), Mr. Duncan asked if there is an expectation that there would be minutes with site walk activity and, if so, should we say that. He added that, in the past, the meeting after the site walk documents the site walk.

Ms. Pelletier agreed, saying that they should put that in the by-laws, as that has been the practice right along; that at that following meeting the Chair will give a summary of the site walk for inclusion in the official record of the minutes.

Mr. Duncan asked if the 'Planning Assistant' was a Town employee as opposed to a Board member in f) Notice iii).

Ms. Pelletier explained that she only takes direction from the Town Manager; that that is formally what her job description says.

Mr. Duncan asked if 'this' term should be expanded upon in any way; he suggested the Town's Planning Assistant as opposed to the PB's Planning Assistant.

Ms. Pelletier suggested that you could say the Planning Assistant or the Town's designated employee.

On page 5, f) v), Mr. Duncan said we are talking about regular and special meetings and asked if a site walk is separately noticed to the public and, if so, under what timeframe

before said site walk, suggesting it may be noticed at the meeting that the site walk is scheduled.

Ms. Pelletier said that, by law, it's a public meeting just like the PB meeting and has to be noticed the same way; that whenever there is a site walk, she just includes it in the agenda under the application item.

Mr. Duncan suggested a site walk may be the Monday or Friday before the regular meeting and asked what notice that got. He added that he knows we've had a number of site walks that were not the same day as the meeting and wonder how that would get noticed.

Ms. Pelletier suggested they could put, under Site Walks, that public notice has to be provided the same as a regular meeting.

Mr. Duncan said that is three days.

Ms. Pelletier said that that's another thing; that she isn't sure we want to put another posting requirement in here. She added that we have a posting taskforce, now, with herself, the Town Manager, and a couple other employees; that she had started creating a table for the PB showing all of your posting requirements and that is just about four pages long; that you don't have to have everything in here but could just write 'as noted by ordinance, statute, Charter' and that should cover it.

Ms. Bennett suggested that that spreadsheet could be included in the by-laws so that it would be easily referred to.

Mr. Beckert said that it could be included as an appendix but not in the body of the document.

Ms. Bennett suggested reviewing possible ordinance revisions regarding notices to simplify them.

Ms. Pelletier explained that, if there's something you can enact a change on, it's in an ordinance and, if it's something you cannot, it's in the Charter; that if it's in the ordinance, it's also in statute and the Ordinance Governing Boards, Commissions, and Committees, which the PB has no control over.

There was discussion regarding posting site walks on the agenda and making sure the agenda is out to meet the notice requirement if the site walk falls on a day other than the regular meeting.

It was noted that g) Executive Session i) should probably say 1 M.R.S.A. §405. There was further discussion to clarify what the proper citing should be.

Mr. Whalen supported 4) e) Other Board Members being assigned to Section 2 Membership 4). He also offered some grammatical edits.

Ms. Pelletier suggested that, in 5) Meeting Organization b) Special Meetings, the PB include how you call a special meeting and how you notify – is it by email, by phone. She added that she thought it was three days for emergency meetings.

There was discussion regarding formatting the by-laws, as well as defining, to reflect ‘special’ versus ‘emergency’ meetings; how called and how posted. Also, members can be polled to approve a special/emergency meeting by email or phone, as soon as possible. It was suggested that emergency meetings will be held by the requirements of the Charter.

Mr. Whalen suggested that, under C) Public Hearings i), the word ‘citizens’ be changed to ‘individuals’, as well as in d) Work Sessions ii) (2).

On page four, under f) Notice iii) take out ‘assigning’ and insert ‘forwarding’; after (i.e. Town Clerk) place a comma.

Mr. Duncan asked if there is anything in the Town Charter, our by-laws, or the Town ordinances that would prohibit Mr. Whalen, Ms. Bennett, and himself from getting together and having a beer for Christmas Eve one night.

Mr. Beckert said that, as long as you don’t discuss Town business, you are fine.

Mr. Pomerleau agreed, saying that there is nothing in State statute that prevents three people from getting together on a social basis.

Ms. Bennett said that, in the Meeting Organization section, she had a note “where the applicant is not present” after the words “...applications before the Board are not to be discussed...”. She asked, if the applicant was in the room, could not a citizen raise a question about the application during public comment, as we wouldn’t be denying the applicant due process because they would be there to respond; that it might help, especially with controversial or complicated applications, to allow the public to comment along the way.

Mr. Beckert said that he would be interested in reading the sample by-laws from the other communities to see how they handle that.

Ms. Bennett said that there are some instances where it is an integrative process; that the process is more of a workshop format where the public is allowed to weigh in or express any concerns along the way.

Mr. Duncan said that, on a planning board he was a member of in another community, they allowed the public, after discussion between the applicant and planning board, to discuss the presentation given in that particular night. He asked if anyone here had, and

do they bring it here, access to the most current edition of Robert's Rules of Order, suggesting they should have access in case there is ever a question.

Ms. Horner suggested members, if they strongly support it, come with some wording for the PB to review; that she thought citizen participation was very important and finds that, sometimes, the process we have can limit citizen questions along the way. She added that a part of her, as a business owner, would find it hard to listen to potentially negative input about a business she might be trying to open that may not be productive (someone might not like a particular application); that she doesn't like that we might put businesses or homeowners or future citizens of this Town in a situation where the applicant feels they have to defend themselves or feel bad about the dock they want to put in, as an example. She said that there is a fine line, there, between allowing people to ask questions versus just complaining because they don't want their view obstructed, or something like that.

Ms. Bennett didn't disagree but that she did believe we should include the public and that we would get a better, more peaceful end result for everyone involved. She discussed the workshop that Ms. Pelletier went to, "Yes, In My Backyard"; that the Chair of the Portland Planning Board said that all land use decisions are passionate; that people have feelings about them – people who do have land, people who don't have land, people who see the land – and the best way to do this is to get everyone together so they can come to a place where everyone's happy and get peaceful resolution. She added that, by denying people their response to a change in land use, or any voice in that change in land use, you are necessarily going to have people that are really upset.

Mr. Duncan said that, in response to the concern, he thinks it's up to the PB through the Chair to control what's being said; that if someone in the audience says they want someone to paint their house red, and that's not in the ordinance, it isn't a germane issue; that the Chair even cuts off comments that aren't germane to our activity.

Mr. Lentz said that there are people who say things for the sake of hearing themselves talk and, so, supported Mr. Duncan's point; that it is up to the Chair to stop negative comments. He added that nobody likes to hear all the complaints but we are in the public business; that that's what we do but we need to maintain a higher standard.

Mr. Whalen asked if, therefore, every meeting would take on the demeanor of a public hearing.

Ms. Pelletier said that one of the questions we asked our attorney was how we can comply with that section in the Charter without violating due process, suggesting it might be good to wait to see what his input is and, then, formulate what you're going to do.

There was discussion regarding current public comment limitation, unlimited (within reason) comment at public hearings, and the effort by the PB to solicit written comments from the public, if they have questions or concerns, and that way the PB and the

applicant have those in front of them to consider, but written comments are few and far between.

It was suggested the members take a good look at what the other towns are doing on that specific issue and then spend some time discussing just that and how to address it. Another issue is having public questions that don't always have immediate answers.

Ms. Adams suggested the PB look at the 10-day window for getting written responses in because, in the past, people have written in their comments and they were not shared or were deferred and not taken up again. She added that she didn't know what the PB did with comments that came into their purview but suggested they look at whether the rule would be that comments would need to be in 10 days in advance or would they accept comments along the way.

Ms. Pelletier said that the PB did just formalize that policy, in writing, which was a revision from 2005.

Mr. Fisher suggested the PB have a timeframe within which an applicant could respond to public questions and concerns.

There was discussion regarding public input that the PB agrees needs to be addressed versus something the PB feels is already answered or not required.

Mr. Pomerleau said that the PB is even looking at this level of public input is a very good, healthy thing; that he thinks were you will end up when you hear from the attorney is that, first and foremost, you must always protect the integrity of due process of the applicant. He added that a lot of people keep referring to Portland, and he likes the word 'controversy'; that there's a huge difference between public input on a guy that wants to put in a dock – the value of public input that would actually impact the public would be very questionable – as opposed to Portland where they want to put in cold storage on the waterfront and waive a 75-foot high building requirement; that, clearly, the public input there matters because it's going to impact the whole look of the waterfront, properties behind it, etc. He said that he thought that the questions would come in that issue of waivers. He added that the Board is always going to have the responsibility and the authority to use their discretion as to the public input, the relevancy of it, the amount of it, etc., and the Charter doesn't change any of that. He said that, with questions that are not applicant-specific, as an example you are discussing ordinances changes tonight and the Charter gives the people the right to speak to that item; however, when you get into case-specific, due process, integrity of the process, he thinks it's good that the PB will exercise, in some instances, some discretion of what importance the public can bear on that and where it's just whining.

Mr. Beckert said that we have a spreadsheet coming on the timeframes, answers hopefully coming from the attorney fairly soon, and copies of 6 or 7 other community by-laws that Ms. Bennett has found for our review.

ITEM 7 – DISCUSS STATUS OF OUTSTANDING ACTION ITEMS

There were no outstanding action items.

ITEM 8 – CORRESPONDENCE AND PLANNING ASSISTANT, AS NEEDED

Mr. Beckert said that it has been brought up that our June 6 meeting conflicts with the public hearing for the TIF and asked for the PB's desire.

The PB agreed **by consensus** to move the June 6 agenda items to the June 20 meeting.


The PB meeting on July 4 is cancelled.

ITEM 9 – SET AGENDA AND DATE FOR NEXT MEETING

The next regular Planning Board Meeting is scheduled for July 18, 2017 at 7PM.

ITEM 10 – ADJOURN

There was a motion and a second to adjourn the meeting at 8:22 PM.



Steve Beckert, Chairman
Date approved: 7/18/17

Respectfully submitted,

Ellen Lemire, Recording Secretary