

Town of Southwest Harbor  
Planning Board Minutes January 5, 2023  
Town Office & via Zoom 6:00PM

- I. Roll Call- Eric Davis, Jack Ksionzyk, Priscilla Ksionzyk, John Williams, Ken Salvatore, Michael Levesque and CEO John Larson, absent was Lee Worcester

Also present: Tom Benson & Mandy Holway

- II. Eric Davis called the January 5, 2023, Planning Board meeting to order at 6:00PM.

- III. Approval of Minutes December 15, 2022, Planning Board meeting

Motioned by: Eric Davis, to approve the minutes of December 15, 2022, Planning Board meeting

Seconded by Jack Ksionzyk

Motion passed 5|0|1- Michael Levesque abstained

- IV. Public Hearing

Amendment #2 Seawall Pond Subdivision  
David & Vickie Llyod  
Tax Map 19 Lots 21 & 21E

Opened Public Hearing @6:01PM

No public comments/ concerns

Closed Public Hearing @6:02PM

Southwest Harbor Water & Sewer District  
7 Apple Lane  
Tax Map 3 Lot 62

Opened Public Hearing @6:02PM

Mandy Holway introduced herself with the district and welcomed any questions towards the project.

No other comments/ concerns.

Closed Public Hearing @6:03PM

- V. Old Business

Amendment #2 Seawall Pond Subdivision  
David & Vickie Llyod  
Tax Map 19 Lots 21 & 21E  
Finding of Fact

STATE OF MAINE  
MUNICIPALITY OF SOUTHWEST HARBOR  
**FINDINGS OF FACT AND DECISION**  
**ON APPLICATION FOR SUBDIVISION APPROVAL**

Subdivision Name: Seawall Pond Subdivision Amendment #2 Map 12 Lot 10-2

Applicant's Number: 207-244-0820

Applicant's Name: Tom Benson

Applicant's Address: Freeman Ridge Road, Southwest Harbor, Maine 04679

Before an application for subdivision approval may be approved, the municipal reviewing authority must determine that the proposed subdivision meets the following criteria;

**1. Pollution.** The proposed subdivision will not result in undue water or air pollution. In making this determination, it shall at least consider:

- A. The elevation of the land above sea level and its relation to the flood plains;
- B. The nature of soils and sub soils and their ability to adequately support waste water;
- C. The slope of the land and its effect on effluents;
- D. The availability of streams for disposal of effluents; and
- E. The applicable state and local health and water resources rules and regulations;

Met ✓      Not Met

Reasons: based on the fact this amendment corrects actual road location, the amendment to the subdivision will not result in undue water or air pollution.

Motion by: Eric Davis

Seconded by: Jack Ksionzyk

Discussion: None

The motion carried unanimously. 6|0|0

**2. Sufficient Water.** The proposed subdivision has sufficient water available for the foreseeable needs of the subdivision;

Met ✓      Not Met

Reasons: based on the fact there is an existing well for each lot, adequate water is available for the foreseeable needs of the subdivision.

Motion by: Eric Davis

Seconded by: Jack Ksionzyk

Discussion: None

The motion carried unanimously. 6|0|0

**3. Municipal water supply.** The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be used;

Met      Not Met      NA ✓

Reasons: No Municipal water supply to be used.

Motion by: Eric Davis

Seconded by: Jack Ksionzyk

Discussion: None

The motion carried unanimously. 6|0|0

**4. Erosion.** The proposed subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results;

Met ✓      Not Met

Reasons: based on the fact the amendment does not involve any soil disturbance, will not cause unreasonable soil erosion

Motion by: Eric Davis

Seconded by: Jack Ksionzyk

Discussion: None

The motion carried unanimously. 6|0|0

**5. Traffic.** The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing and proposed and, if the proposed subdivision requires driveways or entrances onto a state or state aid highway located outside the urban compact area of a urban compact municipality as defined by Title 23, section 754, the Department of Transportation has provided documentation indicating that the driveway or entrances conform to Title 23, section 704 and any rules adopted under that section;

Met ✓      Not Met

Reasons: based on the fact that the amendment shows actual location of road, will not cause unreasonable highway or public road congestion or unsafe conditions.

Motion by: Eric Davis

Seconded by: Jack Ksionzyk

Discussion: None

The motion carried unanimously. 6|0|0

**6. Sewage disposal.** The proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized;

Met ✓      Not Met

Reasons: based on the fact a sewage disposal system exists for each lot, will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized;

Motion by: Eric Davis  
Discussion: None

Seconded by: Jack Ksionzyk  
The motion carried unanimously. 6|0|0

**7. Municipal solid waste disposal.** The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be utilized;

Met      Not Met      NA    ✓

Reasons: The road location will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be utilized;

Motion by: Eric Davis  
Discussion: None

Seconded by: Jack Ksionzyk  
The motion carried unanimously. 6|0|0

**8. Aesthetic, cultural and natural values.** The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights of way for physical or visual access to the shoreline;

Met    ✓                      Not Met

Reasons: based on that there are no rare or irreplaceable natural areas identified by the Department of Inland Fisheries and Wildlife or the municipality and is not located in the shoreland zone therefore will not have and undue adverse impact of scenic or natural beauty of the area.

Motion by: Eric Davis  
Discussion: None

Seconded by: Ken Salvatore  
The motion carried unanimously. 6|0|0

**9. Conformity with local ordinances and plans.** The proposed subdivision conforms to a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans;

Met    ✓                      Not Met

Reasons: the proposed subdivision conforms to Town of Southwest Harbor Subdivision Ordinance.

Motion by: Eric Davis  
Discussion: None

Seconded by: Jack Ksionzyk  
The motion carried unanimously. 6|0|0

**10. Financial and technical capacity.** The sub-divider has adequate financial and technical capacity to meet the standards of this section;

Met ✓      Not Met

Reasons: based on the fact the road exists, there are no infrastructure costs, the applicant has adequate financial capacity to complete the project.

Motion by: Eric Davis  
Discussion: None

Seconded by: Jack Ksionzyk  
The motion carried unanimously. 6|0|0

**11. Surface waters; outstanding river segments.** Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, chapter 3, subchapter I, article 2-B, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.

A. When lots in a subdivision have frontage on an outstanding river segment, the proposed subdivision plan must require principal structures to have a combined lot shore frontage and setback from the normal high-water mark of 500 feet.

(1) To avoid circumventing the intent of this provision, whenever a proposed subdivision adjoins a shoreland strip narrower than 250 feet which is not lotted, the proposed subdivision shall reviewed as if lot lines extended to the shore.

(2) The frontage and set-back provisions of this paragraph do not apply either within areas zoned as general development or its equivalent under shoreland zoning, Title 38, chapter 3, subchapter I, article 2-B, or within areas designed by ordinance as densely developed. The determination of which areas are densely developed must be based on a finding that existing development met the definitional requirements of section 4401, subsection 1, on September 23, 1983.

Met      Not Met      N/A ✓

Reasons: No portion of the proposed subdivision is located within the shoreland zone.

Motion by: Eric Davis  
Discussion: None

Seconded by: Priscilla Ksionzyk  
The motion carried unanimously. 6|0|0

**12. Ground Water.** The proposed subdivision will not, alone or in conjunction with existing activities, adversely, affect the quality or quantity of ground water;

Met ✓      Not Met

Reasons: based on the fact the amendment shows actual location of road, the subdivision will not adversely affect quality or quantity of ground water.

Motion by: Eric Davis                      Seconded by: Priscilla Ksionzyk  
Discussion: None                              The motion carried unanimously. 6|0|0

**13. Flood Areas.** Based on the Federal Emergency Management Agency’s Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the sub-divider shall determine the 100-year flood elevation and flood hazard boundaries within subdivision. The proposed subdivision plan must include a condition of plan approval requiring that the principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation;

Met              Not Met      N/A ✓

Reasons: No part of the proposed subdivision is located within a flood area.

Motion by: Eric Davis                      Seconded by: Jack Ksionzyk  
Discussion: None                              The motion carried unanimously. 6|0|0

**14. Freshwater Wetlands.** All freshwater wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of local soil and water conservation district;

Met ✓              Not Met      N/A

Reasons: No wetlands have been identified on original subdivision, amendment #1 or proposed amendment #2.

Motion by: Eric Davis                      Seconded by: Jack Ksionzyk  
Discussion: None                              The motion carried unanimously. 6|0|0

**15. River, Stream or Brook.** Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this section, “river, stream or brook” has the same meaning as in Title 38, section 480-B, subsection 9;

Met                      Not Met      N/A ✓

Reasons: Not Applicable No river, stream or brook identified on plan.

Motion by: Eric Davis  
Discussion: None

Seconded by: Jack Ksionzyk  
The motion carried unanimously. 6|0|0

**16. Storm Water.** The proposed subdivision will provide for adequate storm water management;

Met ✓      Not Met

Reasons: The proposed amendment involves splitting the lot with two existing structures and no soil disturbance.

Motion by: Eric Davis  
Discussion: None

Seconded by: Ken Salvatore  
The motion carried unanimously. 6|0|0

**17. Spaghetti-lots Prohibited.** If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond or coastal wetland as these features are defined in Title 38, section 480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than 5 to 1;

Met    Not Met    N/A ✓

Reasons: Not applicable, no part of proposed subdivision is in the shoreland zone.

Motion by: Eric Davis  
Discussion: None

Seconded by: Jack Ksionzyk  
The motion carried unanimously. 6|0|0

**18. Lake Phosphorus Concentration.** The long-term cumulative effects of the proposed subdivision will not unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision;

Met      Not Met    N/A ✓

Reasons: Not applicable, no freshwater in or near the proposed subdivision.

Motion by: Eric Davis  
Discussion: None

Seconded by: Michael Levesque  
The motion carried unanimously. 6|0|0

**19. Impact on Adjoining Municipality.** For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located; and

Met    Not Met    N/A ✓

Reasons: No part of amended subdivision crosses municipal boundaries.

Motion by: Eric Davis  
Discussion: None

Seconded by: Jack Ksionzyk  
The motion carried unanimously. 6|0|0

**20. Lands Subject to Liquidation Harvesting.** Timber on the parcel being subdivided has not been harvested in violation of rules adopted pursuant to Title 12, section 8869, subsection 14. If a violation of rules adopted by the Maine Forest Service to substantially eliminate liquidation harvesting has occurred, the municipal reviewing authority must determine prior to granting approval for the subdivision that 5 years have elapsed from the date the landowner under whose ownership the harvest occurred acquired the parcel. A municipal reviewing authority may request technical assistance from the Department of Conservation, Bureau of Forestry to determine whether a rule violation has occurred, or the municipal reviewing authority may accept a determination certified by a forester licensed pursuant to Title 32, chapter 76.

Met            Not Met        N/A ✓

Reasons: No harvest has taken place in past five years as defined in Title 12, section 8869, subsection 14.

Motion by: Eric Davis  
Discussion: None

Seconded by: John Williams  
The motion carried unanimously. 6|0|0

Other terms and conditions: None

Date of Public Hearing: January 5, 2023

Motion on Amendment #2 Subdivision Plan for Seawall Pond Subdivision at Seawall Southwest Harbor

Motion made by Eric Davis                    2<sup>nd</sup> by Jack Ksionzyk                    to approve the application of Jesse Dunbar for Amendment #2 Subdivision Plan as presented on the final plan submitted.

Date of Approval: January 5, 2023

Votes in Favor **6**

Votes Opposed **0**

Southwest Harbor Water & Sewer District  
7 Apple Lane  
Tax Map 3 Lot 62  
Finding of Fact



Southwest Harbor Water & Sewer  
Upgraded Wastewater Treatment Facility  
7 Apple Lane Tax Map 3 Lot 62  
Harbor Shoreland Zone

Applicable Section VI: Performance Standards: Land Use Ordinance

A. Landscaping/Buffering

Commercial use requires buffering. Planning Board must determine level of buffering per Section VI,

**Standard Met. Level 1 based on existing vegetative buffer adequate.**

B. Driveway and Driveway opening

**N/A No change in existing driveway**

C. Erosion/Sedimentation Controls

**Standard met. The District's construction contractor will be required to provide consistent erosion control measures in accordance with the current Maine Erosion & Sediment Control Best Management Practices (BMP's). District will provide full time resident inspector to ensure consistent maintenance of necessary controls as work progresses.**

D. Exterior Lighting

**Standard met. Exterior lighting will be provided and meet dark sky design requirements, with exterior lights shielded and luminance less than 0.1 foot candles at the property line.**

E. Fill and Excavation Standards

**Standard met. The project will involve excavation and filling to install new concrete treatment tanks, high tide pump station, and chemical building. The site will be restored to generally existing grades upon completion of these installations.**

F. Fire Protection Standards

**Standard met. The proposed work does not meet the threshold triggering State Fire Marshal review as referenced in the ordinance. The SWH Fire Chief has provided a letter stating there are no concerns with the project.**

G. Flood Hazard Area Standards

**Flood Hazard Permit to be issued by Code Enforcement Officer**

H. Handicapped Access Standards

N/A

I. Heavy Commercial or Industrial Pollutant Standards

**N/A No materials subject to State of Maine regulations for heavy commercial or industrial pollutants. There is limited chemical storage existing now on site for wastewater treatment processes, and this will continue in the future in upgraded facility.**

J. Noise:

The Planning Board reserves the right to determine if noise from a proposed project or an expansion of a use will be "objectionable". A majority vote of the Board is required for this determination.

1. Will there be any objectionable noise transmitted outside the lot?
2. If there is noise that may be objectionable, the Board must determine by majority vote.

**Motion: This Standard has been met based on no objectionable noise transmitted outside the lot. There will be no added noise due to the upgrade. There is an existing generator on site which is being replaced. The new generator is being located to reduce noise impacts to neighbors.**

No motion made. All in agreement.

K. Parking and Loading Standards

**N/A No change in Parking and Loading Standards**

L. Road Standards

**N/A no new road proposed.**

M. Sewerage Disposal Standards

**Standard met. Wastewater will be treated at the District's facility.**

N. Sign Regulations

**N/A No new signage is proposed.**

O. Soil Standards

**Standard met. The soil conditions were investigated by Maine Registered Professional Engineers during design and are adequate for the proposed project. No wetlands are present that could be impacted by the work.**

P. Storm Water Runoff Standards

**Standard met. The site is already significantly developed, and there is only a small increase in impervious area, and no changes to runoff patterns. Any runoff will flow to the shoreline, therefore will not adversely impact other properties.**

Q. Stream Standards

**N/A No stream on property.**

R. Vibration Standards

**N/A No operation of facility will create vibrations.**

S. Water Quality Standards

**Standard met. The project will not discharge anything that will adversely impact water quality. All work will meet DEP NRPA standards. The DEP is partially funding the project has reviewed the project and approved for construction.**

T. Water Supply Standards

**Standard met. The treatment plant is already served by water supply and there will be no changes to water use.**

Eric Davis motioned that the application meets all the Performance Standards.  
Seconded by Michael Levesque  
No discussion  
Motion passed 6|0|0

VI. New Business

None

VII. CEO Issues

None

VIII. Next Meeting Date: January 19, 2023

Possible Select Board Budget Meeting that night, to be confirmed for January 19, 2023, or February 2, 2023

IX. Adjourn Meeting

Jack Ksionzyk motioned to adjourn the meeting @6:30PM

Seconded by Eric Davis

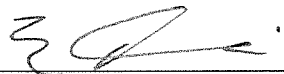
No discussion

Motion passed 6|0|0

Respectfully submitted,

Sarah Abbott,  
Deputy Clerk

**APPROVED**



Eric Davis, Chair

Date: Feb 16, 2023