

Town of Southwest Harbor  
Planning Board Minutes November 3, 2022

Town Office and via Zoom 6:00 PM

- I. Roll Call –John Williams, Michael Levesque, Lee Worcester, Eric Davis, Jack Ksionzyk, Ken Salvatore and CEO John Larson,
- II. The Vice Chair called the November 3, 2022, Planning Board meeting to order at 6:00 pm.
- III. Approval of Minutes October 20, 2022  
Motion by Eric Davis, 2<sup>nd</sup> by Jack Ksionzyk to approve the minutes of October 20, 2022.
- IV. Old Business:  
Chair Eric Davis for clarification purposes made a motion that Board Member Lee Worcester did not have a conflict of interest in the Jesse Dunbar Amendment #2 Subdivision Plan Ben C. Worcester III at Southwest Harbor Tax Map 12 Lot 10-2, Jack Ksionzyk made 2<sup>nd</sup> and after some discussion the vote was 3-1-1. John Williams voted against, and Mike Levesque abstained for bias.  
John Williams stated the Subdivision Ordinance says a site visit shall be made. After some discussion, the Ordinance should say may instead of shall. No action was taken.  
  
Jesse Dunbar  
Amendment #2 Subdivision Plan  
Ben C. Worcester III at Southwest Harbor  
Tax Map 12 Lot 10-2  
  
The Chair opened the Public Hearing on Amendment #2 Subdivision Plan Ben C. Worcester III at Southwest Harbor at 6:015 pm.  
  
Ken Rozsahegyi voiced his concerns about deed restrictions playing a factor. The first deed restriction states the lots may not be subdivided. He also stated because Lee Worcester retains ownership of the roads in the subdivision, there appears to be a conflict of interest.  
The Chair stated that if it's not in the Ordinance, the Board cannot enforce the deed restrictions.  
  
The Chair closed the Public Hearing at 6:25 pm.

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

Subdivision Name: Ben C. Worcester III Amendment #2 Map 12 Lot 10-2  
Applicant's Number: 207-266-9963  
Applicant's Name: Jesse Dunbar  
Applicant's Address: 4 Blueberry Lane, 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 splits an existing lot into two lots with an existing house on each of the proposed lots, the amendment to the subdivision will not result in undue water or air pollution.

Motion by: Eric Davis                      seconded by: Ken Salvatore  
Discussion: None                              The motion carried unanimously.

- 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.

- 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: Ken Salvatore  
Discussion: None    The motion carried unanimously.

**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  
Discussion: None

seconded by: Ken Salvatore  
The motion carried unanimously.

**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 divides lot with two existing structures, will not cause unreasonable highway or public road congestion or unsafe conditions.

Motion by: Eric Davis  
Discussion: None

seconded by: Ken Salvatore  
The motion carried unanimously.

**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 divided.

Motion by: Eric Davis  
Discussion: None

seconded by: Ken Salvatore  
The motion carried unanimously.

**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: There is Municipal solid waste disposal, each household has availability

Motion by: Eric Davis  
Discussion: None

seconded by: Ken Salvatore  
The motion carried unanimously

- 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: Jack Ksionzyk  
The motion carried unanimously.

- 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: Ken Salvatore  
The motion carried unanimously.

- 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 applicant is splitting one lot into two, 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.

**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

seconded by: Ken Salvatore

Discussion: None

The motion carried unanimously.

**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 lots are .92 to 3.19 acres in size and retention of natural buffers, the subdivision will not adversely affect quality or quantity of ground water.

Motion by: Eric Davis

seconded by: Ken Salvatore

Discussion: None

The motion carried unanimously.

**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: Erick Davis  
Discussion: None

seconded by: Jack Ksionzyk  
The motion carried unanimously.

- 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  
Discussion: None

seconded by: Ken Salvatore  
The motion carried unanimously.

- 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: Ken Salvatore  
The motion carried unanimously.

- 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.

- 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.

**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: Ken Salvatore  
The motion carried unanimously.

**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: Ken Salvatore  
The motion carried unanimously.

**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: Jack Ksionzyk  
The motion carried unanimously.

Other terms and conditions: None

Date of Public Hearing: November 3, 2022

Motion on Amendment #2 Subdivision Plan for Ben C. Worcester III at Southwest Harbor, Maine

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

Date of Approval: November 3, 2022

Votes in Favor	Votes Opposed	Abstain
5	0	1

V. New Business:

None

VI. CEO Items: None

VII. Next Meeting date November 17, 2022

VIII. Adjourn Meeting

Motion to adjourn at 7:10pm by Eric Davis , 2<sup>nd</sup> by Ken Salvatore  
Motion passed 6-0.