

PLANNING BOARD MINUTES
TUESDAY, SEPTEMBER 30, 2025
6:00 PM
SOUTHWEST HARBOR TOWN OFFICE
MEETING ROOM & ZOOM

I. CALL TO ORDER/ROLL CALL

The Chair called the meeting to order at 6:00 PM.

Members present: Chair Eric Davis, Joel Wolak, Priscilla Ksionzyk, John Williams, Michael Levesque, and Charlotte Gill.

Vice Chair Lee Worcester was recused.

II. ADOPTION OF AGENDA

Member Levesque moved to adopt the agenda with the removal of the the September 16, 2025 minutes as they were not prepared. Member Ksionzyk seconded the motion and the Board voted 6-0 to approve the motion.

III. MINUTES – September 3, 2025 and September 16, 2025

Chair Davis moved to approve the September 3, 2025 minutes with the change that items 1, 4, 11 and 12 were carried to the September 30, 2025 meeting. Member Levesque seconded the motion and the Board voted 6-0 to approve the motion.

IV. CONFLICT OF INTEREST

Member Levesque announced his personal bias and recused himself from the next items.

V. PUBLIC HEARING

Chair Davis opened the public hearing.

An unidentified member of the public asked whether the project site was located on an uncontrolled hazardous site. The Board responded that the site itself was not an uncontrolled hazardous site but was located near one.

The unidentified speaker then requested to read from a letter written by Douglas Risting, a geologist with the federal government. The speaker stated that Mr. Risting had written to the Board expressing his opinion that “this site is not a safe location for development at this time and

pursuing construction on it or near it would be reckless without first remediation of the site and implementation of better land use controls.”

The speaker further stated that development at the site could endanger residents and expose the Town to potential liability. He added that, as a taxpayer, he did not want to bear the financial risk of possible future lawsuits.

Michael Levesque requested that the letter be made part of the record.

Member Williams stated that there was no evidence demonstrating that the site was contaminated.

Jim Vallette asked the Board whether his submission had been received. Chair Davis responded that the application had been found complete and that August 25, 2025, was the final deadline for submitting additional information.

Member Ksionzyk stated that she did not have the letter in her meeting packet. Mr. Vallette again asked whether anyone had seen his letter and subsequently read it into the record. He asserted that the negative easement placed on the property demonstrated that the site was contaminated and noted that, although a monitoring well remained on the site, no data from it had been provided to the Town.

There was discussion regarding whether permits had been sought or issued by the Maine Department of Environmental Protection for the project. Chair Davis clarified that the application before the Board was for a subdivision only and did not propose any physical alterations to the site. As a result, construction-related permits were not required as part of this review and would be obtained at the time a specific development proposal is submitted.

Greg Johnston interjected and stated that the process taking place was unusual, noting that the tone of the discussion had shifted from a public comment period to an inquiry by members of the public. He added that deliberation is the role of the Board, not the public.

Mr. Worcester spoke to the negative easement and the rationale for it. He noted that contamination of Marshal Brook Road necessitated the need for a deed restriction that would disallow any wells, for any purpose, on any of these lots. He added he had no idea why it was named a negative easement and he was acting on the advice of his legal counsel.

An unidentified speaker spoke on the landfill and the delinquency of its closure. It was noted that this site is 1,000' away from the landfill.

Member Ksionzyk read excerpts from the Land Use Ordinance related to protecting neighbors and the community. She stated that she would not be voting yes on any of the standards for this application. Chair Davis answered that this is a subdivision application, no disturbance of the soil is being proposed with this project.

An unidentified speaker asked the Board when the environmental catastrophe would be addressed.

Greg Johnston then spoke, offering context for the issue. He stated that the proposed development is not located on the landfill site, noting that the landfill is approximately 1,000 feet away. He further pointed out that within that 1,000-foot distance, multiple lots—particularly along Seal Cove Road and Long Pond Road—have previously been subdivided and developed. Mr. Johnston cautioned the Board against informing property owners that they cannot subdivide their land solely due to the presence of a landfill located 1,000 feet away.

An unidentified speaker stated that in 1998 the Planning Board approved a subdivision and that, years later, the Department of Environmental Protection (DEP) discovered toxic pollution at the site.

Chair Davis closed the public hearing 46 minutes into the meeting.

VI. OLD BUSINESS

a. EMR., Inc. Tax Map 013 Lot 014 Final Plan for 12 lot subdivision Findings of Fact

Chair Davis reminded the Board that its role was to determine whether the proposed project would create new pollution on the site.

Chair Davis moved that the applicant had met the standard by demonstrating the site elevations; confirming that no flood zones are present on the property; proposing no subsurface wastewater disposal system; showing that the town sewer would have no effect on effluent; and identifying no streams on the site. Member Williams seconded the motion. The Board voted 2–2, and the motion failed, with Members Gill and Ksionzyk voting in opposition.

Member Williams asked whether the Board could approve the application with the condition that the applicant provide soil and water testing. Chair Davis strongly disagreed, stating that imposing such a condition would be inappropriate in the absence of applicable standards.

Member Ksionzyk read an excerpt from the ordinance related to septic installation and stated that the language provided the Board with authority to request additional information regarding soils. Chair Davis responded that the section being cited applied specifically to septic standards and not to general soil conditions.

Chair Davis again asked the Board to specify what information or testing they were requiring the applicant to provide. Member Williams stated that the Board needed to review the ordinance and applicable performance standards. Chair Davis responded that there were no standards in the ordinance that would allow the Board to initiate a general environmental investigation.

Chair Davis asked that, if the Board intended to require a study, members identify the standard the applicant would be required to meet. Member Gill stated that the applicant needed to demonstrate that the soils met safe standards. Chair Davis asked for clarification, specifically asking what the soils needed to be safe for.

Member Ksionzyk then read a section from page 24 of the ordinance, stating that it allowed the Board to require a soils report for intensive land uses. Chair Davis disagreed, stating that the act

of subdividing a lot does not, in itself, create pollution and that the Board's determination must be based on whether the proposal would generate new pollution.

Mr. Worcester asked the Board what information he was required to submit.

At that point, multiple speakers were talking simultaneously, and the discussion became unintelligible.

An unidentified speaker suggested that the Board require a state certified soil scientist and geologist make a determination on the potential risk to human health for this subdivision.

Chair Davis moved that the applicant meets the standard that the development will not cause undue erosion. Member Williams seconded the motion and the Board voted 4-0 to approve the motion.

Chair Davis moved that the standard for subsurface waters and outstanding river segments does not apply. Member Williams seconded the motion and the Board voted 4-0 to approve the motion.

Chair Davis moved that the groundwater standard was not applicable to the project. Member Williams seconded the motion and the Board voted 4-0 to approve the motion.

Chair Davis moved that the applicant has met all the standards pending the submission of a pollution study which is acceptable to the Board. Member Williams seconded the motion and the Board voted 4-0 to approve the motion.

At that point, multiple speakers were talking simultaneously, and the discussion became unintelligible.

Chair Davis stated that the meeting would be continued until the applicant gives a presentation on the pollution study.

VII. NEW BUSINESS - None


VIII. CEO ISSUES

Schedule next meeting October 7, 2025 at 6:00 PM.

CEO Larson stated that there were no CEO issues.

VIII. ADJOURNMENT

Chair Davis moved to adjourn the meeting 1 hour and 33 minutes into the meeting. Member Williams seconded the motion and the Board voted 4-0 to approve the motion.



Eric Davis
Southwest Harbor Planning Board Chair



Date