

Planning Board Meeting – January 21, 2010  
Southwest Harbor Town Office  
6:00 p.m.

Minutes of Meeting

- I. Roll Call/Call to Order: The meeting was called to order at 6:05 p.m.  
Present: Code Enforcement Officer, Donald Lagrange, Board members, Lee Worcester, Michael Magnani, Christopher Rawls, Robert Bosserman, Gordon Wissinger, Eric Davis, Ryan Donahue
  
- II. Minutes of Meeting: January 7, 2010: Moved Davis and Seconded Bosserman to accept the minutes of January 7<sup>th</sup>, 2010 as presented. Vote in favor: 7 – 0.  
  
Visitors: Jean Marshall, Heath Higgins, Trudy Bickford, Kristin Hutchins, Leslie Watson
  
- III. Visitors to be heard not on the Agenda: none
  
- IV. Continuation: reconsideration Granholm/Dutra: Request was received from Mike Gillis to continue the reconsideration deliberations on this item until February 4, 2010. Granholm has been contacted and had no objections. The Board agreed to continue the reconsideration of the Dutra decision to February 4, 2010.
  
- V. Request for reconsideration of the Planning Board decision to grant Permit to Heath Higgins, dba The Moorings Restaurant, at the meeting of January 7, 2010: A letter from Jean Marshall, agent for Leslie Watson, was reviewed by the Planning Board. The letter was sent by e-mail on the 16<sup>th</sup> and received at the Town office on Tuesday, the 19<sup>th</sup> of January. Copy forwarded to the Chairman. Bosserman asked for the salient points to be discussed by Marshall. Marshall passed out copies and said: it is the contention of the letter that the uses being proposed are new and the applicant does not have right interest or title to use the ingress to the Restaurant for a new use. It is also the contention of the letter that additional permits are required before the application may be considered, and at the meeting where the application was approved, it is the opinion of Marshall that that had not happened. Thirdly, referencing life of the permit, Marshall contends that it has expired. She expressed concern that, in her opinion, the Planning Board did not give enough time and effort towards performance standards review, and the issues of safe and healthy conditions. Marshall said the Planning Board should have spent more time reviewing these criteria. Marshall said a fifth item which causes concern is the Harbor Committee, and while it isn't specific, she feels this application should have gone before the Harbor Committee before coming to the Planning Board.

The CEO said, referencing permits from other agencies, the LUO says that the Planning Board may make an approval conditional upon these permits. CEO has e-mailed DEP and Army Corps and DEP does not want to be a part of this use; Army Corps has not responded, after two e-mails, and he believes it is not applicable. He has no concern about other agencies, and will continue to follow up with Army Corps. Concerning the allegation that the CEO is directing the application, it is his guideline which the Planning Board chooses to either follow, or ignore. Concerning the permitting of the parking area, that was done in July of 2007 or 2008, and in the CEO's opinion there is nothing to permit, as it dealt with buffering. When does the permit get issued: from the date of the Planning Board decision or when the applicant comes in to obtain the permit form the CEO? It is ambiguous in the LUO, according to the CEO. The use of the parking lot needed the Planning Board approval, but with less than 250 yds of fill, it doesn't need a permit. Concerning Marshall's rights of passage question, the CEO believes it refers to the walkway, but there is a legal right of way in the plan, and the walkway does not need to be used, and there is a clear path to the area in question that cannot be disputed. Rawls asked about the conditions of the parking plan and whether or not those conditions had been met, along with buffering and fencing. CEO said those items have not been done and therefore has not met the conditions, but the applicant knows he must meet those conditions prior to using that area for parking for this application, and that was part of the Planning Board's conditions of approval.

Bosserman discussed the buffering and it was agreed during the discussions that permits are not needed for buffering, and until the property begins the permitted use, there is no need for the buffering. CEO said permit issuance is only related to construction, and planting is not construction. The Planning Board permitted a use. Rawls asked about the prior permit for the restaurant. CEO said it was an adjustment to the seating arrangement. Mr. Higgins application for parking on Mansell Lane was separate from the pier. Marshall asked if now there is a piece of land that has nothing. Worcester said the Mansell Lane property is a permitted use. Marshall contended that the approval of an application has the same life as a building permit, and Wissinger said if there is no structure hinged to the approval of the site plan, there is no building permit, and only the building permit has a time limit. He referenced a subdivision approval. A section of the Ordinance refers to a project having had substantial completion within two years. Marshall said it is not the CEO's responsibility to contact agencies for permits, it is the responsibility of the applicant to make these contacts. Worcester said there are many things the CEO does to assist applicants, and he would not want to discourage this. CEO said he feels it is his responsibility to check with agencies concerning possible permits required.

Marshall presented google maps showing the Hinckley ramps/docks, and the Moorings Inn ramps/docks and the Moorings Restaurant pier. She said these should be reviewed by the Harbor Committee because of congestion. Davis

addressed the issue of Marshall's concern about the CEO assisting applicants, wondering why that was an issue. Marshall said she reads the Ordinance as the initial application to be carried out by the applicant so they are fully informed about what is going on and can explain to the Board in full their project.

Donahue told Higgins he has come to the Hinckley and the Moorings pier and has not had a problem docking at either, and Higgins said he had talked to the Harbormaster at the end of last summer, as well as the Army Corps of Engineers. Higgins said the Harbormaster also put him on a waiting list for 4 moorings, and the Harbormaster has had the information for a long time. Marshall said she has a letter for Mahaney of Submerged Lands and he said this change of use should be reviewed. Marshall asked about the sales aspect and thought it was not part of the discussion at the approval meeting. Donahue asked if there needed to be a new application and permitted use for selling inventory rather than just services. Worcester asked the Board if they were interested in reconsideration. Marshall asked if the Board felt they had thoroughly reviewed the application. She feels all the issues have not been thoroughly reviewed, and that is the reason for the request for reconsideration and the uses are not maritime uses, as the uses are located in the restaurant. Marshall does not feel the discussion was specific enough and does require reconsideration. Magnani asked if the Planning Board was being asked to micro manage someone's business. Worcester said at this point the Board has enough information to make a decision on whether or not to reconsider. Is there anyone on the Board that is willing to make a motion to reconsider?

Worcester said he feels there was a thorough discussion and all abutters were notified. Leslie Watson asked how the Board knows that this use will not adversely impact the area. Wissinger said it is in the application that there is one 40-person tour boat and one 10-person boat, and 8 kayaks. Worcester asked again if there was anyone on the Board willing to make a motion to reconsider. Seeing none, the Board will not reconsider the application.

VI. Ordinance Workshop (as time permits). The Ordinance workshop began at 7:10 p.m.

Worcester opened the workshop asking whether there was a decision on the right of way issue from the last meeting: the phrase on page 4, in the LUO, Standards, Section II (b) (2) A (s): general regulations: referring to "vehicular" ways was recommended to be changed. (attached). This distinguished between vehicular access and rights of way that provide other kinds of access. In reference to Subdivisions, Wissinger recommended: 'land under rights of way in a subdivision providing vehicular access to adjacent lots approved after May 3, 1988 shall not be included in calculating minimum lot area of lots in a subdivision.' Worcester said that reads better. He will re-draft and e-mail out to member, expecting a response quickly. In Section III, non-conformance, as agreed to last week referring to expansions, Hutchins asked if this was sufficiently

clear. Worcester said if the closest point to the shore, for example is 30', the expansion cannot be 29' closer to the shoreline. It changes the current ordinance to allow lateral additions so long as they are not closer to the water than the existing non-conforming structure. The language recommended is in the memo from the CEO. Worcester asked for a straw poll on this recommendation: 6 – 1 in favor of the change to expand laterally within the 30% limit for footprint and volume.

Worcester asked the board to look, at Section VII, Standards for Special Activities, section IV in the subdivision ordinance: Storm water management – the board reviewed Wissinger's recommendation saying that an applicant must provide a storm water : the change kicks in the fact that an applicant for a subdivision needs to provide a storm water management plan for the impervious areas created by roads and gives them a choice to include the max lot coverage allowed, or suggest some lesser percentage, which would be presented on plats. The Board agreed on the language suggested. Wissinger suggested the CEO put together the changes that were reviewed and the Board vote on those. CEO will come up with language regarding driveways off private roads and the requirement of culverts. Wissinger said the Board agreed on the culverts. Worcester asked for any other items. CEO said regarding signs and street banners, he would like to see that discussed at the next meeting. Marshall said the Board needs to address the multi-unit dwelling should be termed a multi-unit "building". Hutchins pointed out that this is an issue of density.

- VIII. Other Business: The next Workshop meeting will be at 6:30 p.m., Thursday, January 28, 2010.
- IX. Adjournment: The meeting was adjourned at 8:10 p.m.