

PUBLIC HEARING
Southwest Harbor Planning Board
November 18, 2010 @ 6:00 p.m.
Southwest Harbor Town Office

MINUTES

- I. Roll Call/Call to Order: The meeting was called to order at 6:00 p.m. Present: Michael Magnani, Gordon Wissinger, Chris Rawls, Lee Worcester, Michael Mansolilli, Eric David, and Code Officer Donald Lagrange.
- II. Visitors to be heard not on the Agenda: none
- III. Open Public Hearing: The chairman opened the public hearing at 6:01 p.m. and asked for public comment. There were no comments
- IV. Close Public Hearing: The Public Hearing was closed at 6:02 p.m.
- V. Approval of Minutes of November 4, 2010: It was Moved (Magnani) and Seconded (Rawls) to approve the minutes of November 4, 2010. Vote 4 – 0 – 2(Wissinger and Mansolilli),
- VI. Subdivision Review: Anna’s Quieside Cottages: Map 6, Lot 57, off Forest Avenue . The Chairman reviewed the prior Board decision that the application was complete. The Board proceeded to review the criteria for subdivision approval.
1. Pollution: Johnston said the site is 100’ above sea level, and in relation to flood plain it is not on or adjacent to any flood plains. The Board reviewed the map pertaining to Pollution and to the Flood Plain. “the nature of soils and sub-soils and their ability to adequately support waste disposal” was determined to be not applicable in relation to pollution. There will be no subsurface wastewater disposal system. “Slope of the land and its effect on effluent” – Wissinger said if this relates to pollution, it would be not applicable – Board agreed. “availability of streams for disposal of effluent” was also determined to be not applicable as there is no stream on site. “Applicable health and water resource rules and regulations” – applicant said this would be DEP wetlands and wetland crossings for which, in tab 2 and there are field reports in the application allowing that there are no streams on site and this does not apply. Wissinger said it is all off site and there is a letter from the Public Works Director stating there is adequate water and sewer facilities to handle the subdivision. It is required that when the hook up is done, Public Works personnel be on site to approve the hook up prior to burying the line. Note # N on the drawing, from the sewer ordinance allowed the Board to say “yes” to this section of the pollution review.

It was Moved (Wissinger) and Seconded (Magnani) that the pollution review is 100’ above sea level, is not in a flood plane area, there are no subsurface wastewater disposal systems on site, the slope of the land is not applicable, and the availability of streams for

disposal of effluent is not applicable as there are no streams on site. The sites are to be served by the Town, each connection shall be required to file an application and will not be subject to the findings of fact. Vote 6 – 0

2. Water – has sufficient waster available for the reasonable foreseeable needs of the subdivision. A letter in the application from the Public Works Director allowed the Town has the available water for this project. It was Moved (Davis) and Seconded (Rawls) that the application is in compliance with the water standards required based on memo from Public Works. The Board directed the applicant to get a permit for each connection. Vote: 6 – 0

3. Ground Water - will not adversely affect the quality or quantity of ground water. Applicant said it is on Town water and therefore there is no reduction in groundwater – collection and filtration of the water which addresses the quality or quantity of groundwater is indicated by retention areas with mechanical filtering and biological processes to break down pollutants with a mixture of mulch and sand to protect the groundwater as denoted on Map C-2 in the application. It was Moved (Rawls) and Seconded (Davis) that the application will not adversely affect the quality or quantity of ground water. Discussion: Wissinger referred to page 19, Section VIII: maps showing the soil types and the requirements listed there are not applicable. The application meets the requirements of impact on groundwater. Vote: 6 – 0.

4. Erosion: will not cause unreasonable soil erosion or reduction in capacity of land to hold water so that a dangerous unhealthy condition may result. Applicant: the roads and driveways are already there, slopes are fairly flat and there will be vegetation as stated in Tab 10 of the application, and on the storm water plan. In plan C2 of 2 , note 1 in Tab 14 it indicates the methods to be used for shoulder stabilization. Wissinger referred to VIII C-1: topsoil will not be removed from the site as stated by the applicant, and to which he does not object. *Condition:* that topsoil will not be removed from the site. Existing vegetation will be left in tact to avoid soil erosion and eliminate storm water runoff. Applicant - there will be no unnecessary clearing with the exception of minor clearing for roads – page C-1 right side states that trees will remain in the set backs and buffering, existing wood and vegetation to remain including a garden – supplemental buffering is required between covered parking and north line. The project is not in shoreline area and therefore item 3 of that is not applicable. It was Moved Mansolilli and Seconded Magnani that the Finding of Fact will show the application will not cause unreasonable soil erosion or reduction in capacity of land to hold water so that a dangerous unhealthy condition may result. Discussion: Wissinger asked to look at Section IX of the road standards – in the Road Ordinance. He asked to make sure the applicant meet those requirements. Applicant has submitted an erosion control plan. Rawls – this is in support of General Standards C-1 and Section IX: storm water. Vote: 6 – 0

The Board noted the arrival of Member Donahue at 6:30 p.m.

5. Stormwater – Section VIII General Standards A-2: will provide adequate storm water management. Section VIII: A-2 – there is a storm water management plan under tab 10 map C-2. Chairman read Section IX C provisions: the Board asked for comments: drainage easements is where there may be an improvement made in the Town Road at the entrance, the Public works would not want to accept an easement that requires them to maintain systems that a private developer has built. The applicant said all that needs to be addressed is already located on private land and therefore easements are not needed. Reference Section IX C - b & c: applicant discharge will not be increased, referencing storm water section tab 10 a comparison of pre and post development rates is being maintained or slightly reduced. The Board reviewed the tables for pre and post provided by the applicant. Peak flows are reduced. Applicant – the thrust of the road ordinance storm water management is the 25 year analysis – applicant has provided the write up on the 25 year and they have run tests for the 100 year to see how it performed. Percentage wise it maintains or is slightly reduced. Minimum pipe size of 15” – applicant said all existing storm drains are 15” or above and all added are 15” or greater – one is 24”, under the road. It was Moved (Rawls) and Seconded (Donahue) that the provisions for storm water management is adequate as per Section VIII A-2 and IX – C. The motion was rescinded as the Board reviewed some of the parameters of the Sections. After discussion the Board was in agreement with IX-C; C-2 is represented on the drawing and is acceptable. Four inch stone. The Motion above was re-stated and a vote taken. Vote 7 – 0.

6. Sewage disposal: will provide for adequate sewage waste disposal and will not cause unreasonable burden on the Town. A letter from the Public Works Director indicates this project meets all requirements and does not cause an unreasonable burden on Town services. It was Moved (Wissinger) and Seconded (Davis) that based on the letter from Public Works Director Biegler the Town has the ability to provide for adequate sewer and waste disposal. Vote 7 - 0.

7. Solid Waste Disposal – will not cause any unreasonable burden on the Town’s ability to dispose of solid waste. NOTE: The Chairman is owner of EMR and finds no conflict. Applicant stated they are willing to use Town services, and will contact for private services if Town services are not available. The Board accepts this statement from the applicant. Board agreed this section meets requirements. It was Moved (Magnani) and Seconded (Donahue) that concerning Solid Waste Disposal the applicant will provide for adequate disposal and not cause an unreasonable burden. Applicant specifically states as well that in the event solid waste disposal is burdensome on the Town, the applicant will contract with private disposal. Vote: 7 – 0.

8. Traffic: will not cause unreasonable public road congestion or unsafe conditions with respect to use of the public roads existing or proposed. Sections VIII D, Section IX Road and storm drainage design and construction standards. Applicant: There is only one access point to the site, which is Forest Avenue. Referencing two or more roads, Section b is not applicable; Section c- giving access to subdivision and neighboring roads: Applicant indicated that at tab 2 is a letter from MDOT that states no changes are necessary to this plan, and tab 12 – includes the estimate of the type of traffic to be

generated, which is residential use on a residential street. The estimation is 12 vehicles in a peak period between 6 – 8 p.m. This adds one vehicle per 10 minutes to the current traffic flow, and is not an overburden. Wissinger: asked applicant concerning letter to M-dot: reference the amount of trips indicated in that letter – are you saying 40 is the max – and where did that come from? Applicant – if there was a maximum single family use, this would be the maximum daily trips – those have a peak hourly generator which indicates in the letter the maximum probables. Wissinger – the predicted 12 trips per hour is considerably less than 40, and indicates the application will not overly burden the Town road. Wissinger said he is OK because M-DOT stated they do not have a problem. Section D: Forest Avenue is not an arterial road. The applicant is not building an additional access to the subdivision. Therefore this section does not apply to this application. Therefore A & B also do not apply. There is no curbed road on Forest Avenue. B: accesses paving: Applicant – at the end of Forest Avenue for 200' the Town ROW has never been paved; therefore, the Town cannot require the applicant to pave beyond that in his property. The Board suggested waiving this requirement as the Town's portion at the top of Forest Avenue is gravel. It was Moved (Wissinger) and Seconded (Davis) that the application will not cause unreasonable public road congestion or unsafe conditions with respect to use of the public roads existing or proposed, as outlined in Section VIII, Standard D, and Section IX, Road and Storm Drainage design and construction standards, and that the conditions existing at the time of this application is that the Town has not paved the top of the Town Road known as Forest Avenue and therefore the Board finds that Section VIII, Standard D, 1- B requiring 30' of paving at the end of the Town Road is waived. Discussion: Section IX – design and construction standards for roads and storm drainage. Applicant: the road ordinance requires 18' with 3' shoulders and the applicant is widening the road to meet that standard as shown on the plan. All other minimum and maximum slopes are shown on the grading plan C-2. Vote: 6 – 0 – 1 (Magnani).

Recess at 7:24 – Reconvene at 7:31 p.m.

9. Aesthetic, Cultural and Natural Values: will not have an undue adverse effect on the scenic or natural beauty of the area (Section VIII – standard E). Applicant: this application is not within either one of the two view sheds in the Town – the proximity within walking distance to the downtown area is sufficient that no other dedication to these activities are necessary. Rawls – if any of the structures are over 50 years old or have a value to the history, there is available funding. CEO said there is more than 10% of open space for occupant use as well. Maine Historic Preservation Commission responded to the application as requested by the applicant, concerning the impact of this plan, and Johnston provided a record copy of their response. There is adequate open space and there are no historical structures or archeological sites. Item 4: public rights of access to the shoreline is not applicable per a letter from the Department of Inland Fisheries. CEO said, for the record, the State said there will be no historic properties affected by this application. Item 4 is not applicable – there are no rare or irreplaceable areas on this site per applicant. It was Moved (Rawls) and Seconded (Davis) that the application will not have an undue adverse effect on the scenic or natural beauty of the area. Vote: 7 – 0.

10. Surface Waters will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water – It was Moved Davis and Seconded Donahue that this item is not applicable. Vote: 7 – 0.

11. Conformity with Local Ordinances and plans is in conformance with Southwest Harbor Land Use Ordinance, Comprehensive Plan Section VIII, general standards F etc. The Board agreed to review Section VI, performance standards. The Board agreed to start with buffering: The Board will indicate when performing this review each individual item addressed. It was Moved () and Seconded () that this application is in conformance with the Southwest Harbor Land Use Ordinance, having reviewed standards required in the Comprehensive Plan, the Sewer and Water Ordinances, the Road Ordinance and Other plans, codes and ordinances. Applicant: Notes on the right side of C-1 are in reference to the LUO.

Aesthetics

Historic sites

Significant wildlife habitat

Rare and irreplaceable natural areas

Any public rights for physical or visual access to the shoreline.

Section VI: LUO Performance Standards, items a through u:

a. Buffering – C-1 should be in consecutive order of these performance standards. Donahue read the section on C-1 which addresses the buffering of this project. Applicant: Section VI 4 – b – there will be no cutting in the set-back and low level buffering will occur. The impact level as determined by the Board is Level 1. The Board agrees that the buffering proposed meets the ordinance requirements. The Board stated that the level of impact is Level 1 – low, and the buffering proposed meets the ordinance requirements of Level 1. Additionally the applicant will voluntarily buffer as outlined in Section VI Subsection 2 – b-1. The applicant has described the buffering in the notes of C-1, item 1.

b. Vegetation – previously addressed in items 4, 5 and 9.

c. Driveway: Applicant referred to Page 25 of the Land Use Ordinance, the project meets the requirements outlined in this section and all driveways are at least 6' wide. Applicant will review E-911 requirements prior to beginning construction, and will review that with the CEO who is the 911 coordinator. Postal boxes, if used, will be at the entrance to the subdivision. The Board finds that this meets the minimum road opening, minimum set back and curb cutting is N/A.

d. Erosion and Sedimentation – previously addressed under # 4 and 5

e. Exterior lighting: The Board reviewed note E of map C-1 indicating all lighting will be down lighting. Board agreed.

- f. Fill and Excavation – there are no grading slopes, no area greater than 1 acre will be disturbed at one time, referenced in note F. The applicant is not moving more than 100 yards of soil, and it is not associated with any other construction. The Board agreed the applicant is in compliance.
- g. Fire Protection – there is a letter from the Fire Marshall and The Fire Chief. The applicant is in compliance.
- h. Flood Hazard – previously addressed in items 1 and 12
- I. Handicapped – this is not applicable, although the applicant has addressed this throughout sections of the project.
- j. Heavy Commercial Use – Not applicable
- k. Noise – the project will not provide exceptional noise. The applicant meets the standards outlined.
- l. Parking and loading – Sheet C-1 contains parking calculations on the right side below the notes – 61 parking spaces provided which is more than required.
- m. Roads – previously addressed in item 8
- n. Sewage – previously addressed in Item 1 & 6
- o. Sign Regulations - there are no signs proposed as part of this development
- p. Soil –previously addressed in Items 1 and 3
- q. Storm Water – previously addressed in Items 5
- r. Stream Standards – previously addressed in Items 1 & 10
- s. Vibration standards – the Board agreed this is not applicable.
- t. Water quality – previously addressed in Items 2 & 3
- u. Water Supply – previously addressed in Item 2

It was Moved Davis and Seconded Wissinger that this permit application is in compliance with the LUO as submitted. Vote: 7 - 0

It was Moved Wissinger and Seconded Davis that this application meets standards of the 1996 Comprehensive Plan, that encourages development north of route 102 and with the Sewer and Water ordinances, and is adequately addressed in other parts of this review. Vote: 7 - 0.

Moved Worcester and Seconded Davis, that the application is in conformance with local ordinances and plans. Vote: 7 – 0

12. Flood Waters: is the subdivision in a flood hazard area? It was Moved Wissinger and Seconded Rawls that Item 12 is not applicable. Vote: 7 – 0

13 Freshwater wetlands, rivers, streams or brooks: Wissinger asked applicant: referring to John Cullen letter in tab 2, page 3 that he made a suggestion for a parcel map for wetlands. Applicant said this was performed by Morse Environmental Services – the representation was made on the plan and report is on file from the previous application and is in the possession of the Town. Reference Note 6, C-1. Rawls pointed out that CES had surveyed areas east of that spot in 1976 and Coles surveyed it in 2006. The State visited on several occasions. There is representation that there are no rivers, streams or brooks. The Board agreed that the applicant is in compliance. Forested wetlands are in compliance as indicated by Coles and all other portions are not applicable It was Moved Wissinger and Seconded Magnani that the application is in compliance with item 13, freshwater wetlands, rivers, streams or brooks. Vote: 7 – 0.

14. Financial and Technical Capacity – must have adequate financial capacity to meet the above criteria of this Ordinance. There is a letter from Mr. Sprague, VP of the First Bank. Wissinger said the Board needs a letter from someone saying the applicant has enough funds and that is in the application. Donahue asked how this should be stated and was the letter based on the plan before the Board? CEO said a performance bond would be made out to the Town and is primarily for subdivisions that will generate other lots sold to other people. This is on a private person's single piece of property – the Town will not go in there and the Board should not require a performance bond. Davis said the letter presented seems sufficient for this type of application. Discussion was held concerning what the Board will expect for the final plan in terms of financial capacity. Applicant said he hears the Board saying the applicant must bond items that will connect back to Town facilities or infrastructure. The applicant will bond the amount of work that will affect the town infrastructure. Applicant will work with CEO and Town Attorney on this final matter. CEO – financial technical capacity presented in this application satisfies the preliminary review this evening and advice will be sought from Town Attorneys concerning final bonding as it relates to Town infrastructure and neighbors when the final plan is presented for approval. It was Moved (Worcester) and Seconded (Magnani) that financial and technical capacity is adequate for preliminary approval Vote 7 – 0

15. Monumentation – permanent monuments must be set at or within 50' of lot corners & street intersections (Section VIII general standards A-4) This was done in Stage 1 of the application – no additional monumation is needed

It was Moved (Davis) and Seconded (Donahue) that the application is in compliance with monumentation. Vote: 7 – 0.

It was Moved Donahue and Seconded Rawls, that the application of Anna's Quietside Cottages, Phase II is approved with the conditions that the applicant agrees not to remove topsoil from the site, and that the applicant will arrange private solid waste disposal if the town services are not available, will provide a list of items that will need bonding for the final plan, and will provide E-911 information for roads and driveways. Vote: 7 – 0.

VII. Other Business/Meeting Schedule: Worcester said the Board needed to review the Findings of Fact for the Kingsley Inn and Rawls, Magnani and Davis need to sign the document. Next meeting on Dec 2, 2010. No plans for December 16, 2010 meeting unless it is determined later that it will be needed.

VIII. Adjournment: It was Moved (Wissinger) and Seconded (Rawls) to adjourn the meeting at 9:15 p.m.

The Board reserves the right to take agenda items out of order.