

PLANNING BOARD MINUTES
TUESDAY, DECEMBER 2, 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 6:02 PM.

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

Vice Chair Lee Worcester recused and Michael Levesque was an excused absence.

II. ADOPTION OF AGENDA

There were no modifications to the agenda.

III. MINUTES - None

There were no minutes for approval.

IV. CONFLICT OF INTEREST

There were none.

V. OLD BUSINESS

a. Continuation of Trundy Farms Subdivision performance review

Chair Davis opened the discussion by noting that the Board's review was limited to the soil test submission and the applicable performance standards. He further stated that the document had been received prior to the last meeting, and the Board had taken the past two weeks to review and study the submission.

Member Gill reiterated her concerns that the testing did not appear to meet the DEP's state standards for an uncontrolled landfill. She read relevant portions of Title 38 M.R.S. § 1364 to the Board and stated that, in her view, the information provided by the applicant was insufficient to demonstrate compliance with those DEP standards.

Chair Davis noted that the cited DEP provisions are guidelines rather than requirements contained within the Town's Land Use Ordinance, and therefore are not enforceable by the Planning Board.

Jonathan Pottle introduced himself as legal counsel for Mr. Worcester and stated that he was present as one of the applicant's representatives. He agreed that while the Board should not disregard DEP guidance, it is important to recognize that such guidance does not constitute rules or laws. He added that DEP is responsible for enforcing its own regulations, and that the Planning Board is not tasked with administering the DEP program.

Member Ksionzyk commented that the Board had not established specific parameters for the testing in advance, and that it was now too late to do so.

Member Williams stated that the Board must adhere to the ordinance as written. He agreed that performance standards may be appropriate for the Board to consider adding to the ordinance in the future, but since such standards are not currently included, they cannot be applied to this application.

Mr. Pottle added that the Board should be applying the subdivision standards relevant to the application rather than standards pertaining to an uncontrolled site.

Chris Bagley participating via Zoom, identified himself as a representative of Haley Ward, and noted that he was available to address questions regarding the testing that had been conducted.

Member Williams asked Mr. Bagley to provide insight into the testing and to summarize what the results showed. Mr. Bagley explained that, because it was unclear what specific information the Planning Board expected or how the Board wanted the data collected, Haley Ward referred back to prior Planning Board discussions and based their approach on those conversations. He added that the testing was conducted in accordance with the Maine Remediation Standard Operating Procedures.

A question was raised regarding why a depth of six inches was chosen for the soil tests. Mr. Bagley explained that the shallow depth was partly due to the limited time available to gather the information and submit it to the Board, and also because depths greater than six inches would have required the use of drill rigs.

A question was raised regarding the use of a composite sample. Mr. Bagley explained that this is a typical method used to represent the area as a whole. He described that they collected one sample from each lot and combined them into a single composite sample for analysis.

Chair Davis announced that he would open the public hearing, but requested that comments be limited to the soil standards. He added that everyone who wished to speak would be given the opportunity, but the Board would not be responding to questions during the hearing. The

Board would listen to all comments and address questions or respond as necessary at the conclusion of the public comment portion of the hearing.

Craig Kessellheim spoke via Zoom and expressed concern that the Board appeared willing to accept what he considered a deficient report, describing it as inadequate and embarrassing.

Nick Loizeaux, also speaking via Zoom, asked whether it was recommended to sample the soil for a residential subdivision.

Jim Vallette spoke in person and inquired whether a map was available. He also referenced a section from the Maine Municipal Appeals Board and Planning Board Manual, noting that Boards are encouraged to consider technical advice from state agencies.

Chair Davis closed the public hearing at 6:44 PM.

Mr. Bagley responded to the question regarding the existence of a map showing the location of the test samples, stating that 14 subsamples had been collected and mapped. He noted that it was up to Mr. Worcester to decide whether the map would be shared with the Board. He also added that Lot 10 was the only lot not included in the composite sample.

Member Williams moved to accept the findings of fact. Chair Davis seconded the motion with the motion failing 3-2 with Member Gill and Member Ksionzyk against.

Chair Davis advised the Board that they needed to provide Mr. Worcester with direction, either in the form of a decision so he could proceed through the proper channels, or clear guidance on what additional information or materials he needed to submit for the Board to continue its review.

Mr. Worcester asked the Board what he needed to demonstrate for the Board to accept or not accept the soil survey.

Chair Davis asked if the Board needed additional time to consider the matter. Mr. Worcester further stated that he needed to understand what actions would make the plan acceptable, comparing the process to “throwing darts at the wall.”

Member Gill expressed that she would like to see a representative for the Town involved to determine whether the testing conducted was adequate. Chair Davis asked what “adequate” meant. Member Gill responded “public safety.”

Member Wolak reminded the Board that future development on any these lots will be subject to additional regulations.

Chair Davis asked the Board whether they would be satisfied with deeper testing at locations approximately 100 feet apart in the area where the proposed water line would be installed.

The Board agreed that a depth of six feet would be more appropriate and identified general areas along the proposed water line on the map for the test sites.

Greg Johnston asked the Board to formalize a vote to give direction to Mr. Worcester.

Chair Davis moved to accept the voluntary testing of five sites, as shown on the plan and located in the area of the proposed water line, at a depth of six feet, with testing for the same chemicals as previously agreed. Member Williams seconded the motion and the Board voted 5-0 to pass the motion.

The Chair stated that this item would be tabled to the next meeting.

VI. NEW BUSINESS - None

VII. CEO ISSUES

- a. Schedule next meeting December 16, 2025 at 6:00 PM.**

VIII. ADJOURNMENT

The Chair adjourned the meeting at 7:12 PM.

Eric Davis
Southwest Harbor Planning Board Chair

Date