

**St. George Planning Board Meeting
January 10, 2017 – 7:00 p.m.**

The Planning Board meeting was called to order at 7:00 p.m. Members present were: Anne Cox, Chair; Noah Bly, Jane Brown, Ray Emerson, Paul Gill, Mary K. Hewlett and Gary Minery. Also present: Terry Brackett, CEO, Timothy Polky, Assistant Town Manager, Anne Stern, Paul Gibbons, Sandy Yakovenko, Pam LaValle, Leonard Greenhalgh, Ellen Bates, Anita and Robert Siegenthaler, Adele Welch, Bryce and Gail Molloy, Michael Hodgins, James Katsiaficas, Richard Young, Joss Coggeshall, Sandra Roak, Matt Tibbetts, Tim Hoppe, and Dan Smith.

Quorum: A quorum was present.

Conflict of Interest: There were none.

Adjustments to Agenda: There were none.

Review Minutes:

Planning Boarding Meeting – December 13, 2016 – On a motion by Bly, seconded by Brown, the minutes of December 13th were approved as written. The vote was taken and the motion carried.

Onsite Public Hearing - January 7, 2017 - Caroline Irwin, 251 Otis Point Road – The minutes were amended as follows:

Page 1, paragraph 2, line 3, change the words “down to”, to from

Page 1, paragraph 4, 1st sentence should be, “Hewlett also asked if the pier were on the right side of the deck would another larger tree have to be taken out.” A motion was made by Brown, seconded by Minery, to accept the amended minutes of the January 7th on-site public hearing for Caroline Irwin. The vote was taken and the motion carried.

Wharfs:

a. **Bryce and Gail Molloy – Appeal #1 – Notice of Decision:** The applicants were present with James Katsiaficas, of Perkins Thompson, Portland, Maine, representing the Molloyes. The appeals have been sent back to the Planning Board by the Board of Appeals (BOA). The BOA determined that there had been an error in the interpretation of the Shoreline Zoning Ordinance by the Planning Board. The BOA did grant the appeals. Katsiaficas asked the Planning Board if they had the decisions issued on each appeal. They did have the Notice of Decisions but not the BOA minutes. Katsiaficas commented that he had copies for the Board and it should be noted in the record of minutes that the Board has their own copies as well as Mr. Gibbons.

Discussion.

Katsiaficas: And so, for the Planning Board meeting for this evening. There are really two appeals. Both are for a combination float and pier. Both are to allow easier, safer access to the water for the Molloyes. The first application was for a ramp and float that as it was eventually amended; it was a 30' ramp and a 12' x 20' float, perpendicular to the water in an area that was about 250' or more in width in the cove. The float would be usable 5 to 5 ½ hours per tide; this all matters in the record because we feel it is important for the Board to think about as you are looking at preparing findings in the record. Now the record shows that Mr. Stern, who opposed that application, himself, had a 4'x8' float. In a nearby property that Jean Bulanchuk owns, there was also a float in the past. It had a 16' ramp. At the present time both floats are not in the water. The record also shows that there are floats throughout this town that mud out, like the ones the Molloyes have proposed. The Planning Board discussion and public discussion talked about things other than length of the pier and the wharf. The discussion was that this is an area designated by the Department of Inland Fisheries and Wildlife (DIF&W), as on high to moderate waterfowl, wading bird habitat area. In the Town's Comprehensive Plan there are certain areas identified as significant wading bird habitat areas. Because the river basin and mudflats are migratory shore bird habitat and coastal wetland concentration areas, the DEP has identified these coastal wetlands as being wetlands of particular significance. The Conservation Commission has listed this as a significant ecological area. The Georges River Land Trust has a conservation easement across the way. The discussions went beyond the length of the pier, and it went on to the use. The Planning Board only denied the application on the basis of Section 15(c)5. The language that is critical is 'the

facility shall be no longer in dimension than necessary to carry on the activity and be consistent with the surrounding character in uses of the area.'

The Planning Board on that first appeal, made no written findings of fact and the BOA remanded it back to this Board to come up with Findings of Fact and Conclusions of Law. The second appeal, a slightly different flow. It's smaller. A 26' ramp with a 12'x16' float, parallel to the shore area, tucked away to minimize its visual intrusiveness to neighbors and to the neighborhood. The record shows that we presented evidence through a professional wetlands scientist that the ramp and float were going to have minimal environmental impact, no greater than whatever human activity was going out there now. The DIF&W designations were irrelevant to what was going on here. We presented evidence about the length of the pier. Mr. Molloy talked about this being as small as he could make it, in order to fit the four boats on it. The property is steep at the shore land. It's rocky. It is a safety issue. He has slipped. We presented evidence of 10 other locations where there's similar designations by DIF&W and some are in shore bird feeding and roosting areas and some mud-out. They'd been approved by this Board and by the DEP. Many of them were even longer than this.

Again, the Planning Board denied and again, only identified only Section 15(c)5 which deals with length. So, in both appeals, the Planning Board's denial really turned on its' reading of Section 15(c)5 of the Shoreland Zoning Ordinance, which we now know the BOA has determined was a misinterpretation. The Standard looks to the length of the proposed facility. Is it longer than necessary and is the length of that proposed facility consistent with the surrounding character and uses of the area. It's not a question of whether the float use itself is consistent with other uses in the area. So, I note that Mr. Gibbons has put together the proposed Findings of Fact and Conclusions of Law, which is understood, and when I looked those over after I got them at 2:30 p.m. this afternoon, before I got in my car to drive up, I noticed that in both instances, he was addressing Section 16(D). Section 16(D) is not part of the remand, here. The decisions this Board made not once, but twice, were on the basis of Section 15(c)5. That was the reason. It may have been a misinterpretation of how that Standard applies, but that was the decision that was made. As to the second appeal, particularly, the BOA remanded that for Findings of Fact with regard to your decision on Section 15(c)5. So, we object to those findings to the extent that they go to Section 16(D). We don't adopt their findings on a lot of the issues, but particularly the inclusion of 16(D) is beyond the authority of this Board, tonight. Finally, we understand the Board's not taking new evidence and what I'm telling you is not new evidence. What I'm going to say, though, is this. The focus is on the length of the facility under 15(c)5. In our first appeal, the ramp was 30' long. The float was 12'x20'. In our seconded appeal, the ramp was 26' long and the float was 12'x16' and it only stuck out 24' into the water. That's it. Well, before the Planning Board begins its preparation of findings, we simply note that as a matter of public record, in the last two months, this Planning Board has approved two piers, docks and wharfs – 150' or longer. The Oelbergers, 150' facility: 96' long with a permanent wooden pier, a 50' aluminum ramp and 12'x24' float. Michael Gregg's application for a 130' facility; this was what was approved in December and in the minutes, you adopted. I have the draft minutes, here. I'll share a copy with you. The draft minutes – I have a copy for Mr. Gibbons, as well. The Michael Gregg application was 130' or more facility, a 90' permanent, wooden piling pier, 44' aluminum ramp, 10'x24' wooden float, in an area designated by DIF&W as tidal water, waterfowl wading bird habitat, in a bird feeding and roosting area, perhaps near an old dam, according to your minutes and the float grounds out. There may be some water left but the runners touch the ground. So, when you are determining your Findings of Fact and Conclusion of Law, we're asking you to please evaluate the record, in looking at Section 15(c)5 to see if it truly supports the denial of the Molloy's application on the basis of length. We believe that you will find, instead, that the record supports a decision that approves the Molloy's application if the Planning Board is going to fairly, equitably, even-handedly, and consistently apply this Ordinance as it has to other piers, ramps and floats that are many times its size, many times its length, and in similar circumstances in environments similar to the Molloy's proposal. Thank you.

Gibbons: I am Paul Gibbons. I represent Matt Sterns. I am an attorney in Camden. As you know, there are two sides to every story, and if the story was as Mr. Katsiaficas has said it was, we wouldn't be here. There are two sides to this story. The first one I want to address, because it is very important and that is Section 16(D) of the Ordinance. I came here on behalf of my client, knowing that the most powerful argument that we had was that this proposed ramp and float system would have an adverse effect on the water fowl and wading bird habitats in the cove. Section 16(D) addresses that, specifically. So, imagine what it's like when I come here and I address it and the Planning Board doesn't even look at it. So, it goes to the BOA, and he's telling you now, you never have to look at it again. I can never make that argument and you'll never make that decision. It just goes away and that's what he says is fair. Even though I have something very powerful to argue, even though the Ordinance requires, if you look

at Section 16(D), that the applicant has to prove to you those 9 requirements, before any application can be granted in the Shoreland Zone. He is saying throw it out the window. That is not fair to us or anyone else who comes before you, that if you forget to do it, that it is gone forever, even though I have no control over it. That is unreasonable, in the extreme and it's not the way you would want to be treated and that is not the way you want to treat us. Section 16(D) does apply. You must decide those issues, tonight. So, that is a very important issue, not to leave that behind. You can talk to your lawyer about that. I do have some findings which I will pass out in a few minutes for both appeals. I can summarize the issue very fast because there are really only two important ones. The first one has to do with Section 15(c)5 about the length of this proposed pier and whether it is too big for its proposed use and whether because it's too big, it is inconsistent with the area. I suggest to you that when someone says that they need this pier that is 26' long and goes 24' into Watts Cove, with a ramp and float system that is this big, to launch boats that are really small kayaks and canoes that cost \$14,000, is out of proportion. So, that is the first thing, it is out of proportion and that means it is too big. We have not investigated other options available to them to get their boats in the harbor, out the harbor. You only give him one choice for their application. So, that one choice is saying, this is the only way we can do it and that is not reasonable, at all. So, that is the first thing. The second thing is, I wanted to talk to you about the conflict in testimony. After you have decided it is too big, because it is too big, is that...If you look at the rest of the cove, there is no other wharfs or piers, or ramps like this. So, it is inconsistent with that area. Just look at it and you can see that is true. My client, by the way, had a small, little float next to his property which he has not used in years, so right now, no one has a ramp and float system in the inner harbor, at all. Another big issue to me was the conflict and testimony between the two experts about what effect this float would have on the wildlife habitat. Bryan Emerson, their expert, said that it would have minimal effect, direct or indirect, very minimal effect on the wildlife habitat there. That testimony is inconsistent with the testimony of our expert, Paul Leeper and Dr. Podolsky. They both say that once you just put a dock or structure in the water and the wildlife habitat, that for a distance of 300', those birds are disturbed, they will not feed near there, they will not roost near there during low tide. It will not happen. To justify their opinion even more, there is an article that we gave you as part of the record, from the Department of Inland Fisheries and Wildlife about piers and birds and feeding areas and roosting areas. In that article, they state that the research shows that with respect to structures within a wildlife habitat, the feeding area like what it is when the tide goes out and the birds feed in the mud, that for a distance of 300', they are effected by that and birds will not go near it. So, that is an independent recognition that is impossible for anyone to come to conclusion that just by placing this float 24' into the harbor that it is going to have an effect on the birds, for a distance of 300' feet in diameter. If you think about that, that means it would reach across to the other side of the water where there is a conservation easement. Because, even if it is 300' wide, if you go 24', that is how far that disturbance is going to be. If you also think about this, that if you moved it back next to the water, look at the amount of area you have reduced for its effect on wildlife habitat, a huge effect. The amount of area would just be way, way down. That is one of the issues here, if you look at the conflict in the testimony of the two experts, you could not rationally come to a conclusion that placing this float, 24' into the cove, would not have an adverse effect on the wildlife habitat. I think that I will pass my proposed Findings of Fact out to you, for the two appeals. I think the second appeal is probably the most important one because it is the one that had the most controversy. The first appeal, they did not have an expert. It is unfortunate there is two appeals. I would like you to look at it when you go through. I believe, and you can talk with your attorney, the way you should go through this is, you have to look at each standard in Section 15, every one of those standards, tonight, and ask yourself do they apply and give an answer for each one of them. Then you go on to Section 16(D) for each standard. You read it and you vote on each standard. It is long division, it is not fun but it is the way it has to work. Unfortunately, that is how your ordinance is written. I have to admit, it is much easier to say, if someone comes in and say, well you know your house is too close to the water, we do not want to look at the rest of this, but you are really supposed to look at all the standards. So, I will pass it out. I sent a copy of this to Mr. Katsiaticas. The first one I am passing out is the October 4th, the most recent decision that you made. This is the proposed Findings of Fact. The second one I am passing out to you is the June 28th application, the first one, and the proposed Findings of Fact, on that one. There are two more reasons why I think it is important for you to look at Section 16(D) and all of 15(c) is because the last thing anyone needs is for this, if this gets appealed to the BOA again, we do not need to have this come back yet again because you did not look at all the requirements. So, I think that is important because you do not want it to go to the BOA and come here and say what happened to Section 16(D). Why did you not decide these things?

Chair Cox: Okay. I have one question. Would you like to persist with both applications?

B. Molloy: Briefly, they both have pros and cons. We had hoped to have discussions with Mr. Stern about them, but for whatever reason, discussions have not occurred, in spite of multiple reachouts since July. The first proposal

was a little longer in length, fits the Audubon Society criteria for floats and ramps to a tee. The second one, although shorter in length, is devised to hide it from Mr. Stern's view; however, it is less bird friendly. We were hoping to get input from Stern as to which is his real concern. Is it his view or is it the birds, and absent any input from Stern, I'm okay with either, Ms. Chair.

Chair Cox: Okay. We will then look at your first appeal and then look at the second appeal. Let's see if we can follow proper procedure.

Gibbons: I would like to say one thing. We disagree with the characterization but we have been trying to meet to resolve this problem. My client is a pilot. He has to fly at different times. We were going to meet this morning, but he couldn't make it. We hope that we can resolve this no matter how you decide tonight. I would say that Mr. Molloy is correct. He has offered, and we have tried to meet. I think that will happen, at some point in time.

Katsiaficas: One other item. It is not common for the party who loses, to prepare findings to support the defeat. That is why you do not have them. On the other hand, we in our October application carefully went through each of the standards. You may have noticed that when you were preparing your findings. You will find what we would support for our side, if we were to prevail, for each of those standards.

Chair Cox: I believe that, we as a Planning Board should have our fresh eyes using this. This should be our eyes on these. I appreciate that we have both your sets to look at, as we need to. Help me if I'm off base here. It seems that we need to turn to Shoreland Zone, Section 15(c), Page 23, for application #1.

Hewlett: We are discussing the one that juts out into the cove.

Chair Cox: We are discussing the one that goes into the cove, and it is the longer – 32' aluminum ramp attached to a 12'x20' seasonal ramp. This ramp and float would extend 25' into Watts Cove.

B. Molloy: That was actually the original. We revised that to 30'.

Chair Cox: Then on August 28th, you revised it to 30'. Yes.

Katsiaficas: Turned sideways, it was only 12' long.

Chair Cox: It is 30' long and the float is turned perpendicular to the ramp, not parallel. It forms a T.

B. Molloy: Correct.

The Chair proceeded with the following:

Section 15(C): Piers, Docks, Wharfs, Bridges and Other Structures and Uses Extending Over or Beyond the Normal High-Water Line of a Water Body or Within a Wetland and Shoreline Stabilization

1. No more than one pier, dock, wharf or similar structure extending or located below the normal high-water line of the water body or within a wetland is allowed on a single lot. Brown made a motion, Bly seconded, that the criteria was met, because there was only one proposed. The vote was taken, motion carried 5-0.
2. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion. Chair Cox noted this first proposal was being pinned to a big rock. Minery made a motion, Bly seconded, that the criterion was met as it is being pinned to a rock. There will not be any erosion. The vote was taken, motion carried 5-0.
3. The location shall not interfere with existing developed or natural beach areas. Minery made a motion, Brown seconded, that the criteria has been met as there are no beach areas in the location and it is all ledge. The vote was taken, motion carried 5-0.

4. The facility shall be located so as to minimize adverse effects on fisheries. Chair Cox asked what the definition was, as she did not notice one in the glossary. She asked commercial fishing activity? Hodgins stated that if there is not a specific definition, it is the ordinary use of the term fishery. The Board discussed if shell fish would be considered. Hodgins said he did not think that it necessarily had to be commercial. Chair Cox asked if it was a large clamming location? Bly said he did not think that the area was opened as a clamming area, now. Hewlett said Emerson had mentioned earlier that there are clammers that actually park in his yard/area. Chair Cox asked, "When it is open." Hewlett added, that when it is available. Brown noted they park along Wallston Road.

Hodgins indicated to the Board that they are in deliberations. He said he was going to mention this before, in fairness to the parties. If the Board wants to ask them for clarification, you can ask those questions. The parties and the audience really should not be interjecting while the Board is deliberating. The Board continued to discuss clamming. Minery did not see how it would have an adverse effect on it. It is just a small portion and not using the whole cove. Minery made a motion, seconded by Brown that this criteria has been met as there appears to be no adverse effect on the fishery. The vote was taken, the motion carried 5-0.

5. The facility shall be no longer in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A pier, dock or wharf in non-tidal waters shall not be wider than 6' for non-commercial uses. Chair Cox said it is not wider than 6'. Hewlett added that it is in tidal waters. Chair Cox said that this is the crux of the issue for the Board. They learned that the BOA interpreted it to be related only to the length of the pier. Chair Cox believes the Planning Board was looking at the surrounding character and uses of the area. She said it seems that there are two phrases that both have to be met. It seems they are not just in terms of the plain reading of this ordinance; it appears they are two different things. Chair Cox asked about case law. She asked Attorney Hodgins to clarify how this section should be read.

Hodgins responded that not only do you have case law in Maine; you have case law which is directly from the Town of St. George, and case law that is directly on the point with this part of the ordinance. Meaning, we are not usually this fortunate to have the court that has interpreted this. I cannot recall from reading the minutes, if at all, that case was actually argued here at the Planning Board, before. What the law court said in the Lentine case was, at the time the ordinance said no larger than necessary. What has happened since, the Town has actually gone back and clarified, no longer. What the court said was applying the length to the dock, does that length, itself, interfere with the surroundings, meaning not the habitat, etc. Does it interfere with the use around that pier, meaning other boats in and out, that sort of thing? The question is does it interfere with the actual area, not with the habitat, etc. That is really what the law court said. That is what is meant by interfering with the surroundings. Are you impeding traffic, etc? I believe this will go to Jim's point. The law court specifically said in that case, there are other use criteria that were in the ordinance at that time that needed to be met. It was a precursor to 16(D). What the law court was saying, those other 9 criteria needed to be met, also. Those criteria were met elsewhere. The only question in 15(c)5 is: Does the length of this dock interfere with other uses in the area.

Emerson thought the Harbormaster said there was no problem. Brackett clarified that it does not affect navigation. Chair Cox read the list of uses that Brackett had come up with for the Watts Cove area. Boating, swimming, recreational fishing, nature watching. Chair Cox added there is no commercial fishing in this cove. Minery did not know how it affects it, adversely. In his opinion, he felt it actually made it safer to get to the water that the length, itself, does not affect it adversely. Chair Cox asked him was that because it was a shallower slope on the ramp when the tide is up. Hewlett added that you need to be consistent with the surrounding character and uses of the area. Minery said that was not the question. Chair Cox said what we are hearing is that the surrounding character and uses of the area. It is only going to be Section 16. Minery noted that if you use the area of St. George, "Yes, it is." There are a lot just like this. Chair Cox said, "Right." She added that there are a lot just like this. The one thing that she did not know if the Board would be able to address, as she felt they did not have the tool for it, was this is a long, narrow cove. If you look at long, narrow shallow coves in St. George, do they all have floats. Minery said that in Shumaker Lane that is a long and narrow cove. Similar in a sense, though it does go to open ocean, but it is similar. Chair Cox added Cutlers, Long Cove and other areas do not. She was not sure the Board has the tool to decide. Hewlett thought the open ocean is an issue. Cox added that she was not sure if this was a tool to allow them, to do it. Hewlett said there is nothing that talked about moorings. There are four moorings in that area. They were not on the original plan.

Minery said the Board cannot rule on moorings, though. Hewlett agreed but wanted to know if the structure was going to affect the moorings that are out there. She did not know, as she did not know the placement of the moorings on the application because the first application did not have any in the cove. Chair Cox said that was a good point.

Hodgins addressed the chair. The question is, are the moorings in the evidence that was in the record before. Chair Cox stated, they were not. They were not there. The moorings went in after this was denied.

Katsiaticas stated the moorings went in after the first one was denied. The moorings were there in the second one. Board clarified that they were working on the first appeal. Katsiaticas apologized. Hodgins said that was a good point. The Board should limit it to what is in the record at that time. He said we are not re-opening it for supplemental evidence. Brown and Hewlett reiterated no moorings. Chair Cox asked if there was a motion on this item. Brackett said something has to be reached. Chair Cox said it needs to be decided on.

Brown made a motion, Minery seconded, that it meets the criteria of the length and will not affect birdwatching, fishing, not interfere with wildlife, and is no longer than necessary to carry on the activity and is consistent. Chair Cox noted that there were no other ramps there. Bly noted that there were ramps there before but nothing that was permitted. Brackett said that it had not been discussed before. Hodgins thought one of the issues people are getting hung up on is, "consistent with," meaning there needs to be other docks. He did not feel that this section means what the law court said. He felt it was whether or not the length of this dock is going to be consistent with other uses in the area, not is it consistent with every other dock. If it was the first dock, you would never get the first dock in. The question is whether the length is consistent with other uses within that area. Bly said that considering the location in the second application, he felt that one was more. Hewlett added, "desirable." Bly added that was the location it could be. Minery said we could not look at that one. He said the Board has to make a decision on the first one. Bly would not agree that it is not longer than necessary. Chair Cox noted that this was one question we had at the first meeting. Can it be shorter? Can it be someplace else? Hewlett added that was part of the public hearing for the first one. Is this the best location on this property for this structure? Bly said that is why they came up with the second location.

Hewlett: Exactly.

Chair Cox said they came up with the second one because we turned it down. Minery said that when we say consistent with the area, is this an area within 300'. That is the question. Minery felt that it had to be the entire peninsula. Bly said that Watts Cove is a lot different than Roaring Spout. Minery said that it is still access to the water. Bly said there is access to water all over the world. Chair Cox said that she does have access to the water. We are not saying that he cannot have access the water. Minery said he was talking about the area and being consistent. Hewlett said it was brought up at the first public hearing. Was that the only location that this could be located? Chair Cox added did it need to be so long. Hodgins felt that this was a valid question but because we were talking about the length, which is specific to the fairly immediate, he did not think the Board should say is it longer that it might be in another cove across town. This section is literally talking about does the length interfere with uses in that area. That is part of it. He said they had already talked about the fact that the record of the first application is that record and it is hard not to cross-over. He thought that the Board needed to go based on that. The other way to look at it was, the length may be longer but there are two different locations. The question is where it was placed in the first application. Is that basically a reasonable length, no longer than necessary, if it were to be permitted in that location? In the other permit application #2 the question would be, is it no longer than necessary to permit it there in that location. They are slightly different designs. He felt that they would not want to cross pollinate between the two applications, if it can be avoided.

Chair Cox inquired could one also say that any length would be given the testimony of some wildlife biologists, that any length would be disruptive? Chair Cox said that she wanted to explore this fully. Emerson said to Chair Cox that you are not talking about the wildlife in this section, are you? Hewlett said uses of the area. One of uses of the area is birds. Chair Cox said there are birds. Chair Cox posed a question - would any length at all interfere with the nature watching and the birdlife? Chair Cox said that is not the motion you made but further discussion on it. Hewlett said the Board did have the workshop, telling how important the wildlife birds were. That was a public meeting that Hewlett had brought up during the first meeting. Chair Cox asked for a vote on Brown's motion. Brown repeated the motion that it meets the criteria of the length and will not affect

birdwatching, fishing, not interfere with wildlife, and is no longer than necessary to carry on the activity and is consistent. Minery had seconded the motion. The vote was taken. 2-3 (2 in favor, 3 opposed).

Cox said those opposed needed to state why.

Bly said he believes it is longer than necessary. That is the same location. It is just going off the end or perpendicular to it. The ramp could be put perpendicular. Minery added that Bly was talking about application #2 and he cannot even talk about that in this section. Bly said he was not talking about. Minery said he was talking about the next. Hewlett said that Bly thought it could be shorter if located elsewhere on the property. Period. Bly said that is right. Hewlett said it was nothing about the #2 application. Minery said that is not what he said. Bly disagreed. This is one way it could be put, and then there is another way it could be put (drew a picture). This way is shorter, so he feels that this way is longer than necessary.

Chair Cox voted against it. She felt any length would interfere with the character and uses of the area which include the water fowl life. Minery said that to him, that was everywhere down here. Chair Cox said, "To me, it's hard because it is everywhere down here. I think we have a few places that aren't developed, that are safer for birds and we are getting more developed. In the back of my head, I don't know if this can come in but it seems that we are getting more development pressure, and if there are a few places that could be more removed. I feel like our..." Minery tried to clarify her comment by saying, any length. Chair Cox said any length.

Hewlett said that she absolutely agreed with what Chair Cox said. She thinks that this is a Gold Standard area for birds, as we have been told by many experts and that any disturbance in this area. . . It did not matter the length to her.

Chair Cox said that this has been turned down, 2-3 on line #5. Chair Cox asked Hodgins if the Board was in proper procedure with what was done. Hodgins said yes, although, he said the members did not have to agree on the issues but an affirmative vote to say that it does not meet the criteria. A motion should be made to say that it does not meet the criteria for the following reasons, as opposed to not passing 2 to 3, then having the discussion. Chair Cox asked Minery what he was going to say; she knew he disagreed. Minery said someone will need to make a motion. Chair Cox said the motion needs to be. This has failed. We have two different reasons. Bly feels that they could be in the same location, a shorter ramp. Hewlett said an alternative, shorter ramp. Chair Cox said that two of the members felt that any length is inconsistent with the character and uses of the area. Hodgins felt that the conclusion is that the length does not meet the standard. He said you could list the separate findings. The vote would be on whether or not the length meets the standard. The findings can be listed. They can be separate. He said you do not have to vote specifically on the findings, but that gives the reason for why the three of you voted not to approve on that standard. He said you would have different findings that could be applied to that same standard. Chair Cox said that we need a motion that this standard had not been met. Hodgins added that the facility is longer than necessary. He said to follow the language in the ordinance.

Bly made a motion on #5 that the standard has not been met because it is longer than necessary. Hewlett seconded the motion. The vote was taken. 3-2 (3 in favor, 2 opposed). Hodgins said to affirmatively state the basis behind that. He said that should be clarified for the record and say these are the facts that we find, to hold that it does not meet the standard.

Chair Cox said, "So, these are the facts."

1. Bly added that there could be an alternative location.
2. Chair Cox added, and length. Bly agreed, saying, an alternative length.
3. Hewlett added that the bird area will be affected by any structure in this area.

Chair Cox asked Attorney Hodgins if the Board needs to make a motion or is it sufficient. Hodgins felt it was sufficient to state in the decision what the basis of the findings were because the Board had taken the vote.

6. No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operation necessity. Chair Cox said we need a motion that is not applicable.

Hewlett made a motion, Brown seconded, that it is not applicable because there are currently no abutting piers, wharfs, docks or other structures at this property. The vote was taken, 5-0.

7. New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board. Hewlett made a motion, Brown seconded, that this is not applicable because the property that we are discussing is not a tidal property. The vote was taken, 5-0.
8. No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district. Brown made a motion, Bly seconded, there is no structure proposed. The vote was taken, 5-0.
9. Except in the Commercial Fisheries/Marine Activities District, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure. Brown made a motion, Hewlett seconded, this is not applicable as there are no structures proposed and it does not exceed 20 feet in height. Brackett added that it is not a commercial zone. The vote was taken, 5-0.
10. Vegetation may be removed in excess of standards in Section 15(P) of this ordinance in order to conduct shoreline stabilization of an eroding shoreline, provided that a permit is obtained from the Planning Board. Construction equipment must access the shoreline by barge when feasible as determined by the Planning Board.
 - (a) When necessary, the removal of trees and other vegetation to allow for construction equipment access to stabilization site via land must be limited to not more than 12 feet in width. When the stabilization project is complete, the construction equipment access way must be restored.
 - (b) Revegetation must occur in accordance with Section 15(S).

Chair Cox said there is no removal of trees or vegetation proposed. Hewlett said they were going to take the moss off the rock. Chair Cox said that was true. Hewlett added, they came back and said they were going to access the ramp via the walkway which did go over vegetation. Hewlett said it was certainly safer. The second design was much safer than the first, with the walkway and ramp, included. She said, "I don't think we can say it's not applicable, but it is applicable, but they've done the minimal amount necessary for removal to be safe." Hewlett made the motion, Brown seconded, that applicants have done the minimal amount necessary for vegetation removal. The vote was taken, 5-0.

Chair Cox asked Hodgins if they needed to go to Section 16(C). He responded whether or not they felt they voted on Section 16, before. He felt that especially on this appeal, it appeared that it was not addressed. He thought the answer was, if it applies and he said before, the law court specifically that those criteria need to be met. He felt that if Section 16 is not addressed (he thought Paul had said it), it's going to now come back down. Those findings as the ordinance reads, "for all applications" before you. The Board has to make those findings on every single permit. That is what Section 16 says. He said, "If you have not made those findings, I think you need to make them now, so it is clear, if it goes up again to some court or the BOA that you have actually ruled on every one of those. I did not see in the record that you had. I would say that you probably need to." Chair Cox said that the Board needs to do that because it had not been done.

Section 16(D) Procedure for Administering Permits:

Chair Cox said the application shall be approved or approved with conditions, if a positive finding is made based on the information presented that the proposed use:

1. Will maintain safe and healthful conditions. Hewlett made a motion, Minery seconded, that this is certainly a safer and healthier way for the applicant to get to the water. Bly said there was some concern that was not the safest way. There is the gap between the stairs and the head of the rock. Gill noted that it was still safer than walking down the rocks. Chair Cox said that is when they came back with the little walkway. Bly said okay, as in the first plans there was no plans for a walkway. Chair Cox said right. Hewlett said he came back to the Board. She said she had to admit that the walkway goes to "that" big rock, and then you would have to get on top of the rock. She was not quite sure how you would do that. You would have to climb. It would go from

the stairs, go on the ramp, then you would go right to the rock. Then you would have to climb on top of the rock.

B. Molloy asked to clarify. He said the second iteration that included the ramp, the wooden stairway which went from the ramp on the rock, to the ground. There was a gap between the stairway and that wooden structure. There was a step up on the wooden platform to get to the ramp. Minery added that seemed safer. There was no further discussion. The vote was taken, 5-0.

2. Will not result in water pollution, erosion, or sedimentation to surface waters. Brown made a motion, Hewlett seconded, that it will result in water pollution, erosion or sedimentation to surface waters. The vote was taken, 5-0.
3. Will adequately provide for the disposal of all wastewater. Brown made a motion, Hewlett seconded, that this is not applicable. There is no waste water. The vote was taken, 5-0.
4. Will not have an adverse impact on spawning grounds, fish aquatic life, bird or other wildlife habitat. Hewlett said that she does believe it would have an adverse impact on birds and bird feeding areas. She said that this cove is unique and it is pristine with no other structures present and that we have had testimony from birding experts, both for and against, the spawning areas of birds. She believes that it will affect the birds and the Board was told that this is a Gold Star area for bird migration and habitat. Chair Cox said she had been wrestling with this. She thought there are a few, very long, very shallow coves that currently have few ramps and floats. Very, very few and those are worthy of holding on to as opposed to a place like Mosquito Cove which is also a high value bird habitat but has had docks there, forever. There is a difference. Minery agreed with her in that sense but he did not think the standard had been met, as this whole peninsula is a migratory bird habitat. There are birds, everywhere. He did not think that this would affect the birds in such a way that they are not going to come back. He said that there are people clamming, they are everywhere down here, and the birds come back. He said they've heard two experts say, two different things. One said absolutely not, and one said he had not seen an adverse effect. Minery said he did not think it would. He said that he thinks it meets the standard. Hewlett said that you need to look at the surrounding properties in this specific cove. Minery said there had been other floats in, and the birds are still there. Chair Cox added that the floats have not been in the cove in a long time. She thought that you do have to look at surrounding properties. We were given this map that showed that we have conservation land even the applicant has a resource protected section on their property. She thought the Board had to look at the whole section, not just this one particular parcel when you look at the surrounding parcels that are attached to this cove. Hewlett said that she thought everyone should have water access, but in this case, it is very unique. She thought there was a planning board just for these types of situations. Chair Cox said that he does have water. It is not as safe for him right now, but there is no reason why he cannot access the water. It is not that we are saying you may not get in the water. You can't say that. It seems like this is a different place. Look at how many docks have come before us. We are getting more disturbances along this shore. If there can be some places that make sense, that have been shown to be a high habitat area, it seems like a good thing even though it does not have a legislative impact but our comprehensive plan has asked us to pay attention to these areas on our peninsula. Hewlett passed around the High Value Habitat Bird Map. Minery asked which have existing floats and ramps on them. Hewlett added, some but not all of them. Chair Cox said that a lot of them, also, do not. Hewlett said that if you look at this property, Cutler Cove and Watts Cove, farther up, Cutler cannot have anything on that side. That is what is feeding this area. Watts Cove, too, has been a real discussion in previous Planning Boards, so there is one in there. Minery asked if this is denied, is it enforced that the existing floats that are there be removed. There are two on the shore. Chair Cox said no. Chair Cox asked for a motion on #4.

Minery made a motion that it will not have adverse effects on the spawning grounds, fish habitat life, bird or other wildlife habitat due to the fact there are many, many floats and ramps that exist on this peninsula that are similar to this location. Because there was no second on this motion, Chair Cox asked for another motion.

Bly made a motion that it will have an adverse impact on spawning grounds, fish aquatic life, bird or other wildlife because of the information gathered about the presence of structures and migratory areas for birds. Hodgins said the motion can be shorter without making all the findings. He said that once the conclusion is met, the facts can be added in. Those facts do not have to be agreed upon by everyone, but those are the facts

for those who voted in favor of the motion. Chair Cox said the motion can simply be that it will have an adverse impact on spawning grounds, fish aquatic life, bird or other wildlife habitat. Bly made the motion, Hewlett seconded. The vote was taken, 4-1.

Findings: Chair Cox said the Board has had documentation that shore birds are impacted by activity within 300' of feeding or roosting birds. That is an undue amount of impact in this pristine area. Hewlett said that it also goes to the fact that this is a mud flat drainage area. This was talked about the first go around. She said it has not been talked about tonight but that was one of the reasons why they felt it was pristine because it drains out at low tide. Hence, the large volume of mud flats available for the birds. Hewlett added that the surrounding parcels of land that have been put into conservation. Chair Cox said she did not feel that would come into play, as this has impact on spawning grounds, fish aquatic life, etc. Hewlett withdrew that part.

5. Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters. Chair Cox asked if shore cover was vegetation at the shore. She said it did not seem that it was disturbing anybody's access that you can see beyond it. Hodgins said visual access whether it blocks views, etc., etc. In terms of shore cover, his interpretation would be vegetation. Chair Cox said that they know it is not disturbing vegetation. Hewlett said there was a question, was not sure if application #1 or #2 in regards to the visual effects from the French property. Someone did make a public comment. Chair Cox said it can be seen but was not sure. She said it seemed like it was being able to look around as opposed to seeing it sticking out there. Hewlett said she was not sure. Hodgins said visual access, meaning can you see the water; not can you see the actual dock. Does it impede access, impede visual access, visual viewing of the water, itself. He said that if someone was on the water across the cove, it was not blocking their view, just there. Chair Cox said it was in their view. Hodgins talked about actual access and points of access. Brown made a motion, Minery seconded, that it does not impede the visual and shore cover, as well as points of access. The vote was taken, 5-0.
6. Will protect archaeological and historic resources as designated in the comprehensive plan. Brown made a motion, Hewlett seconded, that the standard is met. There are no archaeological or historic resources designated there. The vote was taken, 5-0.
7. Will not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries/Maritime Activities District. Brown said it met the standard. Brown made a motion, Minery seconded, that it will not adversely affect the fishing. The vote was taken, 5-0.
8. Will avoid problems associated with flood plain development and use. Brown stated there is no flood plain development. Brown made a motion, Minery seconded, that it meets the standards. The vote was taken, 5-0.
9. Is in conformance with the provisions of Section 15, Land Use Standards. Chair Cox said this is where we get circular and asked how to deal with this. Hodgins said that the Board did not have to evaluate all of Section 15, only the one that applies. He said the Board had already made their decisions on that. He did not feel it was too circular. Bly made a motion, Hewlett seconded, that it is not in conformance with Section 15 due to the vote on 15(c)5. The vote was taken, 3-2. Bly said that you do not have to agree with it. Brown added right. She said her question was same as Bly's. She said that it is what it is. We kind of have to agree. Bly said that voting for that, he thought it was saying that you realize that it was aware that it was not voted for. Brown agreed. That was her question. Minery said that it does not. Brown said it was a moot point. Bly said, yes, kind of, either way. Chair Cox said she felt they all were correct. Minery said that you are contradicting yourselves if, I don't agree with it. Brown said that she was good with that. Chair Cox asked what needed to be done next. Hodgins said he thought the Board had gone through all the criteria for application #1. He thought that application #2, the Board should go through the same process.

Katsiaficas wanted to renew the objection, especially for the second appeal. He read that the application is remanded back to the Planning Board to address question of the law which is the length of the float in regards to Section 15(c)5. That is all that is before this Board under remand. Gibbons said his response was the same as before. Hewlett said she felt the BOA would just send it back to them, if the Board did not go through this, all over again. Chair Cox asked if the Planning Board was only constrained to do what the BOA sent to us. Hodgins said, essentially yes. He said he would have to respectfully disagree with Katsiaficas on that. If the Board had not made findings, it would be impossible to complete the application, one way or the other. He

thought that if the Board does not act on Section 16, as was done on the first application, we would still be in limbo in terms of what your findings were. Although the BOA sent it back to have you correctly apply 15(c)5, he felt that in order to finalize the Board's review of it, you would still have to look at 16.

Katsiaficas said if the Board was going to look at all the criteria, he would simply ask that in Section 13 of your materials, the record, the last three pages are (our) Katsiaficas & Thompsons' findings on 15 and 16 that we proposed to this Board, initially. You might want to compare those with what you have from Mr. Gibbons and, without waiving the objection; but we did address all the criteria as part of our application -the last three pages of item 13, in the record, on repeal. Hodgins said he had been shifting back and forth between Paul findings and Jim's proposed findings. A lot of them are quite similar. Hewlett asked if the Board needs to deny the application. Brackett said it was already denied. Katsiaficas said that the Board had already denied it and you're just doing findings, but that's your counsel. Hewlett said we just clarified the finding of facts which is what the Appeals Board asked the Board to do.

**Bryce & Gail Molloy Appeal #2- Notice of Decision:
October 4, 2016**

Chair Cox proceeding with the following:

This is the aluminum ramp that will be 26' in length connected to a 12'x16' float and extend 24' into Watts Cove. This is the second appeal. On October 25, 2016, the Board voted to deny by a vote of 4-1. The appeal was sent back to the Board from the BOA.

Section 15(C), page 23 in the Shoreland Zoning Ordinance Manual.

1. No more than one pier, dock, wharf or similar structure extending or located below the normal high-water line of the water body or within a wetland is allowed on single lot. Minery made a motion, Brown seconded; this has been met as there is only one single pier and dock being proposed. The vote was taken, 5-0.
2. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion. Minery made a motion. Bly seconded that this requirement has been met as it will be pinned to ledge with no erosion. The vote was taken, 5-0.
3. The location shall not interfere with existing developed or natural beach areas. Minery had a motion, Brown seconded, that this requirement has been met as there are no beach areas and is surrounded by rock and ledge. The vote was taken, 5-0.
4. The facility shall be located so as to minimize adverse effects on fisheries. Brown made a motion, Minery seconded, the standard has been met. It minimizes the effect on fisheries. The vote was taken, 5-0.
5. The facility shall be no longer in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A pier, dock or wharf in non-tidal waters shall not be wider than 6' for non-commercial uses. Chair Cox said this is a similar situation. It is in a different location and it is slightly smaller and slightly shorter. Bly made a motion, Brown seconded, that the dock has been made no longer than necessary in this location. The vote was taken, 4-1.

Cox said her same argument holds that any pier or dock in this area would be too long. Minery said this seems to be the favorable of the two. He asked if they could discuss that the moorings come into play on this application. Brown said they are there. Minery said they are there now. As he said before, he believed that the moorings are more disturbing. Chair Cox agreed. Minery said if the moorings were removed, he should be allowed to do this. Minery said that was his opinion. He said it is safer to access the shore and it is less disturbing. Emerson said the Board did not have the authority to remove the moorings. Minery said they could talk about it as a condition. Bly asked to make a note that the Board made a suggestion. Minery questioned whether it could be a suggestion or recommendation. Hodgins said part of his concern that it would have to be tied to one of the criteria that this is part of the finding. Based on the evidence that was there. The length would interfere with some other use, which he supposed, could be the moorings. His concern is whether or not the moorings are there or not, is not

that something that you can act on. The permit for the moorings did not come to you, you cannot approve them or deny them. Chair Cox said that if he uses the float in the manner in which he has indicated, he would not need to be using his moorings. Hewlett said all moorings have to have a boat on them in the town of St. George. He told us that those specific boats are going to be on this float; hence the moorings will be vacant. Two of them – two kayak moorings would need to stay as he mentioned he did not have room on his float for all the boats. He specifically said that the inflatable and the canoe would be on this float. Hodgins said it is a Harbormaster issue.

You might want to explain on what basis you voted 4-1 to say the length is sufficient. What is it in the record that satisfied you that this criterion was met. He said it has obviously been a sticky issue and you want to make sure you button that down. Chair Cox thanked Hodgins.

Bly said that in that motion, it is shorter than the originally proposed application. Brown added that it is tucked in, behind the rock, so visually it is not obtrusive to the neighbors. Minery said we are just talking about the length. Chair Cox said, in terms of length it is shorter. Hodgins said the length could impact other neighbors. Chair Cox said it has less impact. Brown added, visually. Chair Cox said not only visually, but those boating in the channel. Minery said it was less disturbing, being shorter in length than the previous proposed. Hodgins said his interpretation is the length was consistent with the uses. By being shorter, it is not interfering with navigation. Chair Cox asked if all was ready to move on.

6. No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity. Brown made a motion, Hewlett seconded, that this was not applicable as nothing is supposed to be built on it. It is a seasonal float. The vote was taken, 5-0.
7. New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act. Brown made a motion, Bly seconded, that this is not applicable because it is tidal and they do not need to apply for permits to construct a permanent pier. The vote was taken, 5-0.
8. No existing structures build on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district. Hewlett made a motion, Brown seconded, that no residential dwelling unit is proposed. The vote was taken, 5-0.
9. Except in the Commercial Fisheries/Marine Activities District, structures build on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure. Brown made a motion, Minery seconded, that it is not commercial and no structure will be built. The vote was taken, 5-0.
10. Vegetation may be removed in excess of the standards in Section 15(P) of this ordinance in order to conduct shoreline stabilization of an eroding shoreline, provided that a permit is obtained from the Planning Board. Construction equipment must access the shoreline by barge when feasible as determined by the Planning Board.
 - (a) When necessary, the removal of trees and other vegetation to allow for construction equipment access to stabilization site via land must be limited to not more than 12 feet in width. When the stabilization project is complete, the construction equipment access way must be restored.
 - (b) Revegetation must occur in accordance with Section 15(S).

A motion was made by Minery, seconded by Bly, that it meets the requirement as no vegetation is proposed to be removed as it is being attached to a ledge. The vote was taken, 5-0.

Chair Cox proceeded to Section 16(D)

1. Will maintain safe and healthful conditions. Brown made a motion, Bly seconded, it will maintain safe and healthful conditions. The vote was taken, 5-0.

2. Will not result in water pollution, erosion, or sedimentation to surface waters. Hewlett made a motion, Brown seconded, that this will not result in water pollution, erosion or sedimentation to surface waters with the construction of this seasonal ramp and float, as it is being built on ledge. The vote was taken, 5-0.
3. Will adequately provide for the disposal of all wastewater. Brown made a motion, Minery seconded, that the standard is met. There is no waste water proposed. The vote was taken, 5-0.
4. Will not have an adverse impact on spawning grounds, fish aquatic life, bird or other wildlife habitat. Minery made a motion that it will not have adverse impact on spawning grounds, fish aquatic life, bird or other wildlife habitat due to the fact there are many, many other floats and ramps that are just like this and it is a smaller footprint verses the first proposed ramp and float and in a different location. No second on motion.

Hewlett made a motion, Bly seconded, that it will have an adverse impact on spawning grounds, fish aquatic life, bird or other wildlife habitat. Minery said he does not see how it will have an adverse effect due to the fact there are so many other floats and ramps in the same bird habitat areas and there is testimony from a biologist that it will not. Bly added that it will. Minery said you have it, that it won't either. Chair Cox said there are dueling experts. This is where she said this is one of the unique areas left. Hewlett said this should all go in the record. Keep in mind there was Appeal #1 and Appeal #2. They will not be looking at the reasons we mentioned in the last one. Brackett said right. Hewlett said the members should be very specific in this one, even though we have already discussed it, I think we should put it back in the record. Minery said that especially in this new location. Hodgins said to record your vote and make your findings. Chair Cox asked for a vote on the motion on the floor that it will have an adverse effect. The vote was taken, 4-1.

The reasons why the four Planning Board members felt it would have an adverse impact. Brown said that wildlife experts told us that it will adversely impact. Chair Cox added this is a long narrow cove that it is a pristine cove that drains fully to mud flats which house bird feeding. Minery said that it has had previous floats in it and there are still birds there. People clam there and there are still birds there. Chair Cox said that the reason she would vote against it would be because of that. Minery said he understood but felt he needed to have a rebuttal. Chair Cox said that they were doing the findings why four people voted against it. This is where we are right now. Hewlett said that they have had in previous Planning Board workshops, experts who have talked about bird habitats and roosting habitats. We have the map that was created for the Board that shows that the area is a unique parcel of land. Chair Cox asked what are the reasons that it will have an adverse effect. It is a shoreland, tidal, water-fowl and wading bird habitat according to map 3 of the Town of St. George High Value Bird Habitat. That any disturbance within this habitat will affect shore birds and water fowl within many feet. Brown added that it is a tidal drain-out. Chair Cox said it is a long, narrow, pristine cove that drains fully to mud flats which houses bird feeding. Chair Cox asked if there were any other reasons.

5. Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters. Brown made a motion, Bly seconded, that this will conserve shore cover and visual, actual, points of access to inland and coastal waters. The vote was taken, 5-0.
6. Will protect archaeological and historic resources as designated in the comprehensive plan. Brown made a motion, Hewlett seconded, there are no archaeological and historic resources in that area, that the Board is aware of. The vote was taken, 5-0.
7. Will not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries/Maritime Activities District. Brown made a motion, Hewlett seconded, that it is not a commercial fisheries area. It will not adversely affect it. The vote was taken, 5-0.
8. Will avoid problems associated with flood plain development and use. Hewlett made a motion, Minery seconded, that this is not applicable because this is not in the flood plain development area. The vote was taken, 5-0.
9. Is in conformance with the provisions of Section 15, Land Use Standards. Brown made a motion, Minery seconded, that it is in conformance with the provisions of Section 15. Gibbons thought the last time it was

voted on that it was not in conformance. Brown said that it was approved. Gibbons then agreed. The vote was taken, 5-0.

Katsiaficas asked, since you have denied on the basis of 15(c)5, the first time, do you need to. He said that it speaks for itself, on further reflection, it is now denied on the basis of 16(D)4. Hodgins said, exactly. Katsiaficas said, for further review. Hodgins said the BOA corrected the Planning Board on how to interpret 15(c)5. They corrected their interpretation, but they still denied the permit based upon the rest of the criteria. Gibbons thanks the Board. B. Molloy thanked the Board.

At 9 p.m. a motion was made by Brown, seconded by Bly, to continue the meeting. The vote was taken, 5-0.

There are two items to discuss – Caroline Irwin, a wooden pier and Tim Hoppe, a tree service site plan review.

- b. **Caroline Irwin** – 251 Otis Point Road – Matt Tibbetts represented the applicant. The application is to construct a 6'x24' wood pier with seasonal 3'x50' aluminum ramp, seasonal 10'x24' wood float and a 4'x5' wood landing, with 4'x16' wood stairs leading from the existing deck. Chair Cox asked if there were any changes to the application. Tibbetts said he discussed with Caroline about removing the little birch tree. She would like to keep the tree, if possible. Tibbetts said that he would try to carefully bend the tree over with a piece of rope, bend it out of the way, build the stairs, then let it come back. Brackett said you would rather not see it come out of there. If it became an issue in the future, then Tibbetts would discuss with Brackett. Cox said the application was accepted as complete on December 13th.

Standards:

1. No more than one pier, dock, wharf or similar structure extending or located below the normal high-water line of the water body or within a wetland is allowed on a single lot. Cox said the proposal is for one, the lot has 100' plus of shore. Brown made a motion, Bly seconded, that the standard had been met. The application is only for one. The vote was taken, 5-0.
2. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion. Bly made a motion, Hewlett seconded, that the standard has been met as the ramp will be pinned to ledge. The access to the top will be off the existing deck, the new stairs. The vote was taken, 5-0.
3. The location shall not interfere with existing developed or natural beach areas. Hewlett made a motion, Brown seconded, that this had been met because there are no existing developed or natural beach areas. The vote was taken, 5-0.
4. The facility shall be located so as to minimize adverse effects on fisheries. Bly made a motion, Brown seconded, that it is going out as far as necessary to have water access and not further and will not have effects on fisheries. The vote was taken, 5-0.
5. The facility shall be no longer in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A pier, dock or wharf in non-tidal waters shall not be wider than six feet for non-commercial uses. Minery made a motion, Brown seconded, that it is no longer in dimension due to the fact that the neighboring dock and pier is longer than this proposal. The vote was taken, 5-0.
6. No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operation necessity. Chair Cox asked if there would be an issue of it being attached to the dock. Brackett said you are building a pier, not a home. Chair Cox said or abutting a pier but it is not new structure. Chair Cox understood. Brown made a motion, Minery seconded, there is none proposed. The vote was taken, 5-0.
7. New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act. Chair Cox said it

was on tidal water. Brown made a motion, Hewlett seconded this is on tidal water so it does not apply. The vote was taken, 5-0.

8. No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district. Hewlett made a motion, Brown seconded this is not applicable because a residential dwelling unit is not part of this application. The vote was taken, 5-0.
9. Except in the Commercial Fisheries/Marine Activities District, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure. Hewlett made a motion, Bly seconded, that this structure is not going to exceed 20 feet in height above the pier, wharf, dock and no structure is being built on it. Brackett noted that there is no structure being built on it. Minery and Cox agreed. The vote was taken, 5-0.
10. Vegetation may be removed in excess of standards in Section 15(P) of this ordinance in order to conduct shoreline stabilization of an eroding shoreline, provided that a permit is obtained from the Planning Board. Construction equipment must access the shoreline by barge when feasible as determined by the Planning Board.
 - (a) When necessary, the removal of trees and other vegetation to allow for construction equipment access to stabilization site via land must be limited to not more than 12 feet in width. When the stabilization project is complete, the construction equipment access way must be restored.
 - (b) Revegetation must occur in accordance with Section 15(S).

Cox said the applicant did not want to remove that one tree. Minery added or limb any trees.

A motion was made by Bly, Brown seconded, that the standard was met and there will be no removal of vegetation. The vote was taken, 5-0.

Section 16(D):

1. Will maintain safe and healthful conditions. Brown made a motion, Bly seconded, that the standard was met. It will maintain safe and healthful conditions. The vote was taken, 5-0
2. Will not result in water pollution, erosion, or sedimentation to surface waters. Hewlett made a motion, Bly seconded, that no water pollution, erosion, or sedimentation to surface waters will be involved in this application. The vote was taken, 5-0.
3. Will adequately provide for the disposal of all wastewater. Bly made a motion, Hewlett seconded, that it is not applicable as no waste water will be produced. The vote was taken, 5-0.
4. Will not have an adverse impact on spawning grounds, fish aquatic life, bird or other wildlife habitat. Mr. Molloy asked if he could address the Chair. Chair Cox said she did not believe so as it was not a public hearing. Katsiaticas asked if the Board had ever had a public hearing on this. Hewlett said yes, there was an on-site public hearing. Katsiaticas said most Boards conduct site visits for acquainting themselves with the site and not for conducting a public hearing, then and there. Leonard Greenhalgh said point of order. He said if he was not allowed to say anything, he was not, either. Chair Cox said she was not aware that the Board needed to have this as part of a public hearing. We need to check with our attorney. Brackett said, actually we do. We limit the conversations at the on-sites because it is hard to hear people. Now this is the time. Chair Cox stands corrected. Katsiaticas said he was not trying to be disrespectful. Chair Cox said this is important to hear from any number of people if you have comments to make that would be helpful to the Board. Mr. Molloy said that under Section 16(D)4, we have had substantial discussion – had bird experts and so forth. I have not heard from any bird experts, tonight. Has there been any bird expert, affirmatively confirming that this area will not provide an adverse impact as has been required in the previous ones. Hewlett gave the map to Mr. Molloy. Chair Cox said this is not in one of the sites that are listed on our map. Greenhalgh spoke. He said he was a bird expert about Section 16(D)4. Chair Cox said that is one is a new hearing, so he could speak. Greenhalgh said that he agreed with the map. Hewlett said that the Board had consulted it prior to going out on-site, when

we looked at the application on the 13th. Mrs. Siegenthaler wanted to point out that there are no residents here that are in opposition to this proposal. People have not come forward with experts and lawyers and done the kind of thing that would indicate there are problems in the adjacent area with the residents, with this particular proposal. If there were, I would think there would be experts here, a turn out, and people would be here. It looks as if this proposal seems to fit whatever people think is acceptable in this particular area. Brown made a motion, Minery seconded, it will not have an adverse effect, as it was not on map 3, High Value Bird Habitat. The vote was taken, 5-0.

5. Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters. Brown made a motion, Bly seconded, that this is not applicable as it will conserve shore cover. The vote was taken, 5-0.
6. Will protect archaeological and historic resources as designated in the comprehensive plan. Bly made a motion, Brown seconded, that it will protect the archaeological and historic resources, as there are none known there. The vote was taken, 5-0.
7. Will not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries/Maritime Activities District. Hewlett made a motion, Minery seconded, it will not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries/Maritime Activities, or marine residential district. The vote was taken, 5-0.
8. Will avoid problems associated with flood plain development and use. Hewlett asked if this was in a flood plain. Is it the AE 13? She thought because the structure was built so high up. Brackett said that AE 13 is in a flood plain but is acceptable to have wharfs and floats in flood plains. Chair Cox said it is acceptable in a flood plain. Hewlett made a motion, Brown seconded, the structure would be acceptable in this area. The vote was taken, 5-0.
9. Is in conformance with the provisions of Section 15, Land Use Standards. Hewlett made a motion, Brown seconded, it is in conformance with the provisions of Section 15, Land Use Standards. The vote was taken, 5-0.

Chair Cox asked Tibbetts if DEP and the Maine Corps of Engineers had been contacted. Tibbetts said that DEP is still pending. The Corps approved, recently. Their review includes subcontracting it out to the Federal Department of Inland Fisheries & Wildlife and they review for bird habitat. If they feel there is minimal or no impact, they approve it. That approval is in. Brown made a motion, Hewlett seconded, to approve the application, pending DEP approval and all of the appropriate permits. The vote was taken, 5-0.

Site Plan Review:

- a. **Tim Hoppe Tree Service** – 263 Port Clyde Road – The applicant was present. Hoppe explained that the address is the former Harland Black Construction site, 5.8 acres with a 2-bay garage and an office. His plan is to move all his tree equipment there. Hoppe would like to eventually expand to make organic mulch from brush. The long-term plan is to take some of the brush issue away from the town and make an organic product to sell to put on trails and things of that nature. He said most of the property is for wood, soft wood and hard wood. He did not want it to be a dump site just log wood and for maintenance on his trucks. Chair Cox indicated that this was a change of use. A motion was made by Brown, seconded by Bly, that due to change of use, a site plan review needs to be done. The vote was taken, 5-0.

Hoppe said that he was in a lease agreement to purchase the property, after a year. He wanted the Board to know that he currently has some wood and chips stocked there. He has not made any product. He is in the process of cleaning up the area which has been vacant for approximately 15 years. Hewlett said one issue that might arise, is the issue of the decibels of the wood chipper. They would want to know how loud the splitter and the wood chipper are. Chair Cox said they would also want to know the hours of operation but mainly to gather to see the site, to see what he was doing. At the Planning Board meeting on January 24th, they will ask specific questions and go over the Performance Standards. Chair Cox said it would be helpful to think about sound, pollution, lights, space, where will the oil go, signage. Hoppe brought a sample of what the sign would look like on an existing post. Brown added that we would need to know the dimensions. Hewlett asked if

Hoppe would take a picture of the sign, put the dimensions on it and put it in with the application. Brackett asked Hoppe if he had talked to him about getting an agent's letter. Hoppe said he can get one. Chair Cox also said he should include a sketch. Chair Cox did not want to accept the application as complete until we have had the onsite visit and other questions.

An onsite review needs to be scheduled. Brackett said he would not be available from January 21st – 28th. Polky will cover for Brackett, if the Board wants to do the on-site on that week. The onsite visit will be held on January 23, 2017 at 4 p.m.

There will be Planning Board training after the Site Plan Review at the next meeting on January 24th. Polky will be doing the training. Brackett has contacted Colin Clark, DEP, Shoreland Zoning Coordinator, Augusta to come down to do training, but Clark has not got back to Brackett about this.

A motion was made by Minery, seconded by Hewlett to adjourn the meeting at 9:33 p.m.

Respectfully submitted,

Marguerite R. Wilson, Recording Secretary