

St. George Planning Board
February 28, 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; Richard Bates, Elizabeth Curtis, Jocelyn Paquette, Len Greenhalgh, Matt and Anneelise Stern, Steve Durrell, Pam Lavallee, Sandy Yakovenko, Van LaLiberty, Mark Ingraham, Tim Hoppe, Ellen Bates, Matt Tibbetts, Anita and Bob Siegenthaler, James Barstow and Suzanne M. Hall.

Quorum: A quorum was present.

Conflict of Interest: Scott Sullivan application. Anne Cox was not certain if she had a conflict of interest as she did their landscaping at Derbyshire Lane. She knew the Sullivans were planning to do repair work at that address, but does not expect to be involved in that aspect. She would not be working on or making any money from it. Gary Minery also did work for the Sullivans, but he will not be working on the repairs. The Board determined there were no conflicts of interest.

Adjustments to Agenda: There were none.

Review of the Minutes: A motion was made by Minery, seconded by Brown, to accept the minutes of February 14, 2017 as written. The vote was 5-0.

Public Comments: There were none.

Findings of Fact:

- Tim Hoppe Tree Service – On a motion by Minery, seconded by Hewlett, the Findings of Fact and Conclusion of Law for Tim Hoppe Tree Service were approved as written 5-0, pursuant to the Performance Review Standards Review, Section V, A1-20.

Building Permits:

- a. **Bryce & Gail Molloy** – There was no one present. Chair Cox read a letter from Michael Hodges, the town's attorney. His letter read: Because the appeal has been appealed. It seems better to say that we have received notice that an appeal has been filed in Superior Court. Therefore, they (the Planning Board) do not have jurisdiction and that we will table it until such time as the appeals are completed and the matter is sent back to the Planning Board. Attorney Hodges' recommendation is the Planning Board table the building permit. A motion was made by Bly, seconded by Hewlett, to table the permit. There was no discussion. The vote was 5-0.
- b. **Daniel D. Richard** – Steve Durrell represented the applicant. The application is to install stone rip rap along 130' of shoreline located at 37 Haskell Road, Tenants Harbor. Durrell said they have the DEP and NRPA permits. The pictures showed erosion and tree problems. He said it was a very simple project. All the product would be brought

by barge and unloaded on the high water. The rip rap and equipment would be brought in by barge offloaded on the high water. The barge would back off, again coming in on the high water, and the next high water to offload more. CEO Brackett asked how long it would take. Durrell said about one week.

Hewlett asked if he would be able to keep the tree that was tipping, noted on Item #8, and showed a leaning tree. Durrell said the owner was to get in touch with the code officer, as he could make the decision whether the tree needed to be removed. Brackett said he was at the location last summer, but did not remember making a decision about it. Brackett said he needed to look at it again and would then contact Durrell. Chair Cox, Minery, and Durrell thought the tree should be removed. Brackett thought it was a tree that had come down. Durrell said he has major root and erosion problems with the tree. Mr. Durrell said they would cut the tree and take it with them on the barge.

Hewlett asked if we had a copy of the DEP permit. Chair Cox said yes and it was very helpful to have the DEP permit, included with the packet. Chair Cox said the application appeared complete. A motion was made by Bly, seconded by Brown, to accept the application as complete 5-0.

Discussion: Chair Cox said the Ordinances that apply are 15(B)1a. It is a retaining wall and functionally water dependent use so the setbacks do not apply. Did any vegetation have to be removed? Brackett said some may have to be removed. Durrell said some of the old roots are there and they would be removed. He said as the picture showed, the trees had fallen and it was just a mess. Minery and Hewlett agreed it had eroded a great deal.

Durrell explained the process. They would go along the toe of the slope (at the HAT line – the highest annual tide line) and will dig a small trench with an excavator, then put a 3 to 4' toe stone in the trench with half of the toe stone being exposed. Filter fabric will be put under that and up on, going up the slope. After the toe stones were in place, 1 to 2' rip rap would be put behind the toe stone to stabilize the area. He said they have had very good luck with this over the years.

Chair Cox said if vegetation had to be removed the Ordinance says re-vegetation must occur according to 15(s). Durrell asked Brackett what vegetation had to be removed, as he was not planning to remove any. Brackett said roots would be considered vegetation and they might want something in there to help hold the soil, down near the retaining wall. Brackett said possibly some shrubby type vegetation. Chair Cox said shrubs that are salt tolerant, shoreland shrubs; that is what the revegetation requirements is in 15(s). Durrell agreed with Chair Cox and Brackett about taking out the old roots. Chair Cox said she would give Durrell a copy of the revegetation requirements. Minery said to add "per Brackett's recommendation at the on-site visit." Durrell said when they met at the site, he could take some red flagging and Brackett could mark what he felt was adequate to remove. Cox said 15(C)10. Hewlett said it is on page 24. Chair Cox said in 15(B)1a, the setback provisions do not apply because it is a retaining wall and has functionally

water dependent uses. And, that the provisions of 15(C)10 would apply if vegetation needed to be removed. The CEO will make the determination.

On a motion was made by Hewlett, seconded by Minery, to approve the application based on 15(B)1a and 15(C)10 and the applicant agreed to work with the code enforcement officer on the vegetation issue. The vote was taken, 5-0.

- c. **Scott Sullivan** – Mark Tibbetts represented the applicant. The application is to install a seasonal 3’x60’ aluminum ramp, a 12’x32’ wood float and to do repairs to the existing boathouse located at 3 Derbyshire Lane, Port Clyde. They will be putting new supports and beams underneath the boathouse, replace perimeter walk deck and install new safety railings along the perimeter of the deck.

Tibbetts said there are two parts to the project. Sullivan wanted to repair and resurface the existing boathouse. The repairs would be within the same footprint. He wanted to remove the existing railway and put in a seasonal ramp and float. He is requesting a 32’ float because he has a 29’ boat with a 2½’ draft. Hewlett asked if there would be an on-site visit. Chair Cox said an on-site visit should be done before the Board accepts the application. She asked if all the permits had been filed. Tibbetts said DEP does not regulate seasonal ramps. Tibbetts had the permit from The Army Corp of Engineers and will send a copy to Brackett. Minery wondered if the ramp and float would stick out, it is narrow in that area. Tibbetts showed an aerial picture and commented that it may appear longer onsite but once it is measured, it is about the same length as the neighbor’s. Before accepting the application as complete, an on-site visit was scheduled for Monday, March 13 at 5:30 p.m.

- d. **The Happy Clam (pre-application)** – James Barstow represented the applicant. The application is to construct an open platform behind the Happy Clam Restaurant located at 13 River Road, Tenants Harbor. It is a Tiki bar and Barbeque Pit. Barstow said Howland plans to have a bar in the hut. He thought there would be some type of plumbing. There would be a grill and sinks for washing. The structure would be 24’x 40’ with a 20’x20’ angular addition. Minery asked if the Howlands planned to add a bathroom. Barstow said, he thought they would use the bathroom that is there. Hewlett asked if it was a porta-potty. Barstow said there was a bathroom in the restaurant. Brackett said the site plan shows something that might be a porta-potty. Chair Cox said the site plan said unisex bathroom, outback. Minery pointed out, it was over to the right on the plan. Barstow was not sure. He said if they catered a wedding or large gathering, they might have something like that. Brackett said porta-potties are not allowed to be used as a permanent situation, and we will need to deal with that. Barstow said when he drew up the plans, he did not hear anything about porta-potties. Brackett said Howland did not talk with him about porta-potties. Chair Cox said that raised a question which would need to be addressed on the full application: the capacity of the existing septic system with the number of seats. It looked as though it was for an increased number of patrons. Chair Cox noted the plan said seating for 24 people. Minery asked if there was suitable parking for the number of people. Chair Cox said due to the increase in the number of people, there would be more parking requirements. Barstow said there was

plenty of parking. Chair Cox said they would need to have 8 more parking spaces drawn on the plan.

Chair Cox said there should be a site plan drawn out. Barstow said the Howlands had a site plan from the town. There should be a site plan which should indicate where the leach field is in relationship to the project. Brackett said the leach field is not on the site. Brackett said the last time he was at the Happy Clam, the DOT storm drain pipe was covered over, but it is supposed to be exposed. He explained that it is the pipe that comes from the other side of Rt. 131, opposite the plan, underground and back where Howland's trailer is in that vicinity. The pipe is supposed to be exposed and DOT has told Howland to keep it exposed, so the drain pipe may be an issue.

Chair Cox said on the site plan, in the lower right hand corner, it stated dump. Brackett said he thought it might be a dumpster but it should be clarified. Chair Cox also asked about setback requirements. Does the dumpster need to be setback 20' from the property? Minery said if it was not a permanent structure and was just a dumpster, it would not matter; but Brackett and Minery said if a fence went around it, it would. Minery asked if the structure would be handicapped accessible. Barstow said he assumed it would be. Brackett noted that handicapped accessible means part of the bar would need to be lower. If the bar is 42" inches high, one section has to be lower for handicapped accessibility. Hewlett said that on the parking diagram, the date shows 6/4/09. The diagram is eight years old. Emerson added that it probably should be updated. Barstow was not sure about the date.

Hewlett asked Brackett if he figured out how many of the 28 parking spaces had already been allocated to the interior restaurant. Brackett said, not yet. He did not know what Howland is licensed for at the restaurant. Brackett said he was going to call the Department of Health but had not had a chance. He said Howland should be providing his licenses for the Clam and the deck to the Planning Board. Emerson said they would need to know what times the Tiki Hut would be open. Would it be the same as the Happy Clam? Emerson and Hewlett said patrons now have to go inside the building at 9:00 p.m. because the outside is shut down due to potential noise, as it is an open structure. Barstow said, in the summer it is usually closed by then.

Brackett said on the application, the project description is "outback Tiki Hut/Barbeque Pit." Brackett noted on the parking diagram, it said outside barbeque, on the back-property line. He asked Barstow if that was where the Howlands proposed to do the barbequing. Barstow said Howland does barbequing now. Brackett said the only time Howland does any barbequing was when he did the end of the season pig roast and said if barbequing was going to be on a routine basis, the Howlands would have to be approved for that. There would have to be a public hearing on the application and the issue of routine pig roasts. Barstow said okay. Hewlett said on the plan, it showed steamer/barbeque pit. Minery said it was in the same place as the bathroom. Hewlett said the bathroom was missing on the diagram. Chair Cox asked if there were any plans for landscaping to buffer the structure from neighbors. Barstow did not know. Chair Cox said if Barstow communicated with them, it would be helpful to have a concept, at

least, in the plan. Brackett gave Barstow an information sheet which showed what was needed. He said there may be other information needed which was not on the sheet. Minery said the Howlands must be planning to put a sign up on the structure. Brackett said that was one of the questions on the sheet. Minery, Cox and Hewlett said they would need to know if there would be lighting on the proposed structure. Barstow said probably. Hewlett asked if the Howlands would be back to Maine, soon. Barstow said about two months. Hewlett asked if Barstow would be representing them at an on-site public hearing and he said, yes, he could do that. Minery asked if this was something the Howlands were trying to do this year? Barstow said when he is in Maine, he tries to get as much done as possible. Hewlett asked if there was a letter for Barstow to represent the applicant, and if not, the Board should get one. Barstow said he did not realize all the items needed for the pre-application or he would have put a lot more into the drawing and brought more information. Brackett showed Barstow the Performance Standards. Hewlett said it would be good if he could get the answers to those questions. Brackett said they would also need to know the soil load factor. It is all filled land and it is very wet out back. Brackett said a soil engineer or soil scientist would determine where the ground was suitable to build on and whether it would support the loads. Chair Cox said that land has been filled and is wet below the fill; it is a question of safety and would it last. Hewlett said there was an application to build a single-family home on that property. She did not believe the application had ever been withdrawn. Brackett said a permit was never issued. Hewlett was not positive. Barstow asked if there had been a house in St. George that had a soil analyst done. Brackett said one had to be done because it was commercial property. Chair Cox said the Board had questions, because the land had been filled so much. Barstow asked if Brackett could come look when they dug the hole but Brackett said he did not have the expertise, and said the Howlands needed a soil scientist look at it and decide. Chair Cox said there were not many commercial buildings in St. George but because we know it has been filled, that information needs to be part of the plan and the application.

Hewlett summarized what the Board needs for the application:

1. More information about the bathroom, as the application says one is proposed.
2. A copy of the current license for seating.
3. The information that is on the sheet that Brackett gave you (Barstow); part of that should be a more accurate site plan in terms of what things are where.
4. An accurate number of parking spaces, drawn/detailed out.
5. This needs to have some measurements and be clear: where the bathroom is, all the setbacks.
6. A clear description what goes on in the Tiki Hut. Will it be another restaurant?
7. A letter from the Howlands asking Barstow to act as their agent.
8. A Soil scientist analysis.

Chair Cox said once they have the completed application and information, the Board would need to have an on-site visit. Brackett asked if they would be cooking in the Tiki Hut. On the plan, it showed the barbeque pit somewhere else. Barstow said it was an open building. Minery asked if it would be another mini restaurant, off from the Happy

Clam. Chair Cox said the Board needed a written description of the Tiki Hut and its purpose added to the application.

Gill asked about the septic. Brackett said there was a septic system diagram. Gill asked where the septic was. Brackett said it was on the Wyeth's property. Minery said the tank is on the property. Barstow said it was a very large tank because the building use to be a laundromat. Brackett said it is good for 1,726 gallons a day but with the number of meals that he serves there and the number of seats Brackett thought he was licensed for, the capacity is close to being maxed out. Brackett said he would look at the water flow and water usage. Hewlett asked if it could be rented out for other venues such as weddings and Brackett said not if it had a bar in the middle of it. Barstow said it was an open restaurant. Hewlett said they needed to clarify on the application, if they were planning to have special events. If so, that needed to be included, because right now they are a restaurant. He did not have a right to have outdoor events. Barstow said he did, he had a deck. Chair Cox said the deck is part of the restaurant. The Tiki Hut is on the same property but in another location. Hewlett said they were just trying to prevent problems should they get complaints and then do not have the answers; i.e., a band playing for a wedding until 10 o'clock at night. Chair Cox told Barstow to talk with Brackett. She said the Board would look at the whole application after he had the checklist information and the information the Board requested gathered and ready to submit. Barstow said he would be in touch with Brackett.

Sub-Division Modification:

- a. **David Konieczny** – Mark Ingraham represented the applicant. The application is to merge Lots 5A and 6A into one lot located on Rackliff Island. Ingraham provided a letter of authorization from Mr. Konieczny to act on his behalf. Mr. Konieczny would like to amend the Rackliff subdivision Lots 5A and 6A to combine as one lot. He provided a reduced survey done in 2006 for a prior owner, Mr. Schwarz. Ingraham took the information and developed a new plan. The survey showed the house, septic, well and driveway. Both lots are owned by the applicant. He bought them in two separate deeds, two years apart. He bought the house with Lot 5A and two years later, he bought 6A. During the course of the 2006 survey, they developed a buildable envelope on Lot 6A, and pointed out that it was quite narrow. Mr. Konieczny decided he did not want to develop it and not want anyone else to develop it. Since he wants to merge the two lots, he had to go through a subdivision amendment process. Brackett asked Ingraham to notify the Rackliff Island Association and a letter was provided. It was to and from Donni Witham, Treasurer of the Association. Unbeknownst to Ingraham, she had already presented this to their Board. There was a sticky note on the bottom of her note to him, where she asked for the dues to be paid. The note said she had presented it to the Board, they agreed and they waived his \$400 fee for the second lot that he will not be developing. Chair Cox said the Planning Board was to assume the sticky note written by Witham meant the Rackliff Island Association Board agreed it was fine to combine them. Ingraham received an email from Mr. Konieczny who said the Association was fine with combining them. Ingraham wrote Witham a letter but they crossed in the mail. Witham was already aware what he wanted to do so Ingraham's letter was officially

notifying the Association what Mr. Konieczny was trying to do. It seemed as they are all in agreement. The Board needed a letter or a copy of the minutes of the meeting stating it was in agreement. Minery thought this application should be tabled. Chair Cox, Emerson and Hewlett thought it should be tabled until the Board received a letter. A motion was made by Minery, seconded by Bly, to table the subdivision application until the Planning Board had a letter from the Association stating everyone in the Rackliff Island Association agreed with it. The vote was 5-0 to table the application.

Other Business:

Brackett asked Chair Cox to give the Board members a copy of the Memorandum and the Complaint for Review of Governmental Action (M.R. Civ. 80B) filed with the Superior Court by Attorney Paul Gibbons to Michael Hodgins, Esq., and cc to James Katsiaficas, Esq.

On a motion by Brown, seconded by Hewlett, the meeting adjourned at 8:10 p.m.

Planning Board training began at 8:15 p.m. CEO Brackett reviewed the following areas:

- Standing to Apply, New Permission, page 13
- Freedom of Access, Right to Know, page 14
- Public access, notice of meeting, emergency meetings
- Documentation
- Board Discussions
- Executive Session
- Site Plan confidentiality
- Town and personal emails
- Site Plan visits

The training concluded at 8:45 p.m.

Respectfully Submitted,

Marguerite R. Wilson
Planning Board Recording Secretary