

**St. George Planning Board**  
**July 11, 2017 – 7 p.m.**

The Planning Board meeting was called to order at 7:00 p.m. Members present were: Anne Cox, Chair, Noah Bly (7:02), Jane Brown, Kate Hewlett, Ray Emerson, and Paul Gill. Also present: Terry Brackett, CEO, Richard Bates, Nat Lyon, Diana Bolton, Tammy Willey, Sandra Roak, Greg Howland, William Reinhardt, James Barstow and Matt Tibbetts.

**Quorum:** Ray Emerson and Paul Gill were elevated to voting status. A quorum was present.

**Conflict of Interest:** Marshall Point Lighthouse application. Gill stated he had a conflict of interest as he was first involved in the proposed project and hoped to be involved as the project moved forward. Conflict was resolved as Gill stepped down because Bly had arrived.

**Adjustments to Agenda:** There were none.

**Review of the Minutes:**

**Planning Board Meeting** – June 13, 2017 – The minutes were amended as follows:

Page 2, under The Happy Clam, paragraph 5, line 4, correct to same **decibel** you are...

Page 6, under 1. m. (last item), line 3, correct to contours, **silt** fences, ....

Page 12, under a. Long Property Management, 1<sup>st</sup> paragraph, line 3, correct to read **The property owner is Justin Long.** (Remove the first **is** in sentence.)

A motion was made by Brown, seconded by Bly to accept the minutes of the June 13<sup>th</sup> Planning Board minutes, as amended 5-0.

**Planning Board Public Hearing on The Happy Clam** - June 13, 2017 - The minutes were amended: follows: Page 1, under Brandon Chase, 1st paragraph, line 12, correct to discussed the **restroom** aspect..

A motion was made by Emerson, seconded by Hewlett to accept the Public Hearing minutes of the June 13, 2017, as amended 5-0.

**Public Comments:** There were none.

**Building Permits:**

**a. Collin Moller** – Matt Tibbetts represented the applicant. The application is to replace a 20- year old existing ramp and float located at 32 Shumaker Lane. Mr. Moller purchased the property approximately 1 to 1 ½ years ago. The proposed project is for a 3' x 36' aluminum seasonal ramp and a 10' x 20' wood float, using small anchors and chains to secure the float and a change in the location.

Gill asked how it compared to other ramps and floats in that cove. Tibbetts said they all land approximately at the seaweed line and small rock area, just below the high-water mark. Brackett asked how long the ramp was just before Moller's. Tibbetts thought it was 32-36'.

Emerson asked if an onsite visit/inspection was needed. Chair Cox said yes, and asked if the float and ramp would be grounding out at low tide? Tibbetts said they all do; there are five in the cove. A float & ramp plan and a photograph were included with the application.

Hewlett asked if the area was a High Value Bird Habitat. Brackett was not sure. Hewlett reviewed her smaller map, and Chair Cox confirmed it was in the HVBH – tidal, water fowl and wading bird. She said regardless, the Board needed to do a site visit. Tibbetts said he had the Army Corps of Engineer's report. Because it is seasonal use, DEP is not involved. Tibbetts will mark the area since it will be low tide.

An onsite visit/inspection was scheduled for July 24th, 5 p.m. at 32 Shumaker Lane.

### **Site Plan Review:**

**a. The Happy Clam** – The applicant was present. The application is to construct a semi open building, Tiki Hut and Barbeque Pit behind the Happy Clam Restaurant located at 13 River Road. It would be a semi open structure with the open sides towards the restaurant parking lot and route 131. The two closed sides would face the Sea Street neighbors and the Wyeth property to the rear. Dimensions of the building are 24' x 60'. An on-site visit/inspection was held on June 12<sup>th</sup> and a Public Hearing was held on June 13.

Howland presented the Board with a more detailed plan designed by William Reinhardt. Chair Cox asked where the DOT catch basin was and it was pointed out to her on the plan. Hewlett asked if it had ever had a top on it and Howland said no. She said it was just a hole. Howland said he did have a cover on it. He made it out of wood, but DOT told him they wanted to see the pipe. He said that was why he had all the rocks around in that area.

Chair Cox asked if there were any other questions or information that was missing. Hewlett asked if the Board had the DEP approval and Howland said yes. Hewlett asked if it was in the file. Brackett said he got an email from DEP. Chair Cox read the email Brackett sent to Dustin Dorr of DEP which asked the following questions:

- Would Howland be required to file an application for filling the wetland?
- Would it be a NEPA permit?
- Would it likely be approved?

Howland asked, "When was that email?" Chair Cox said on July 6, Brackett sent an email to Dustin Dorr, and he got a reply that same afternoon. Chair Cox read Dorr's email. "Greg's letter of warning has not been through review, yet. However, it will request that he file a permit application for filling the wetland. It will most likely be a NRPA Tier 1 permit, depending on the amount of fill he is trying to permit. (I have not been back to see if the area has expanded.) I cannot say whether or not it would be approved, at this point in time. I would suggest having him file the permit as soon as possible as it seems that our letter will be in review for some time." Chair Cox said that was not a definitive answer but sounded like DEP was questioning it, looking at what kind of permit he needed and whether it would be approved.

Howland said, "He came out. I already had a permit in my hand from two years ago, something like that. We have already been through this. But he came out and he said, 'okay you need to put some rip rap over here. I want some pictures and we are going to more than likely have you fill out a Tier 1 permit, and that is going to be that.' That is what was said. That is the first I have heard of that."

Brackett, "This is saying that you need to fill out the Tier 1 and get it in as soon as possible, so they can review it." Howland, "He has already been out. He has already told me what I need to do." Brackett, "All I know is what he told me, Greg."

Chair Cox said she had not dealt with the Tier 1 permit issues, so she did not know what the issue was with this situation. She said the State is saying you will need to (and he told you verbally), you needed to

file this Tier 1 permit. Which you haven't done yet." Howland said he was waiting on Dorr to send it to him.

Brackett said, "I would not wait on Dorr to send it to me, because as he said the review has not even started." Howland, "He said he was going to send me a similar letter. I have not received anything. That is the first I have heard of anything." Brackett said they are slow, and suggested he (Howland) do it. Chair Cox suggested Howland be pro-active rather than wait for them to do something about it. Hewlett asked if he could get the Tier 1 application online? Brackett said he could. Howland said he would call Dorr.

Bly asked Howland what the first permit was for and did it not cover the fill issue? Howland, "Yes, it did. It was based on the town's information." Howland told him that was what he went by and showed the pictures and the map he went by. Dorr said that was all wrong. Howland asked why they had a map if it is all wrong? Howland said he spent a whole day with this guy. At the end of the day, he (Dorr) said we need to rip rap this around the edge and just create some erosion control, then he would have him (Howland) fill out (unintelligible) and it would be more than likely a Tier 1 permit or just a warning letter, one or the other. Howland said he was not sure what a warning letter even meant. Howland said according to him everything was good.

Reinhardt said he was not at the meeting with Howland and DEP, but Howland told him that when DEP came down, Dorr told them he thought it was non-jurisdictional, originally, because it was under 4,300 square feet. Howland said, "Right. And even Brackett stood up at the meeting a couple of years ago and said yes, he is under the (unintelligible), everything was fine, and he is under the 4,300 square feet, according to the map you had. So, we are all operating off this information and the DEP said well, none of that is right. Well, if none of that is right, then what do we do - take all of your maps and throw them away?" Chair Cox said that is what it sounds like. Howland, "I do not get it, and now here I am and what?"

Reinhardt said he had a permit to fill everything that he had already filled. Brackett said he did not need a permit to fill... Howland said that was right, he did not need it. Brackett said he felt more had been filled than what he originally was authorized to. Howland said he had a letter from DEP where Dorr told him he did not need a permit for that. Howland said everything was fine until you (Brackett) called him. Howland said now he did not know what was going on. He was not sure why that was done. Brackett said he knew that he was coming down to look at what had been done, and I just called to make sure everything was okay. Howland, "He was not coming; we were all done. He was not."

Chair Cox asked if the Planning Board wanted to accept the application, as complete? Howland said the last time he was at the Planning Board he asked if they had everything and was this is all he needed for them and everybody said yes. Howland said he was told yes, this is it. He apologized and said he had to calm down a little. He said this had been going on since February.

Chair Cox said she understood it had taken a while to get the correct information but the Board had questions. Howland said, "Everything I get (the correct information), then somebody throws a grenade in front of me." Chair Cox said at this point, we will let the Board make a decision on whether the application is complete. Chair Cox said that she did not want to do the Site Plan Review until the Board got the DEP email cleared up, because there would be some questions about the environmental impact. She said it was a gray area, and she wanted concrete/written information rather than verbal information.

Chair Cox suggested Howland contact DEP regarding the filing for a permit and ask for something in writing. Let Dorr know the Board did not believe anything that was not written. Howland said he had emailed Dorr but did not hear back from him. Howland said a Tier 1 permit was nothing; it was the next

step. He had talked with him about it and was told by DEP, they had to issue him a warning letter because this did not fall under the no permit for 4,300, even though he already had a permit and the town had a letter from him. Chair Cox said felt that she would be irresponsible if she agreed there was no problem, and then it turned out there was. Hewlett said the DEP letter would help the Board in their review.

Bly asked if he had the permit, what was going on? Howland said the permit was based on the information that the town has on the maps. Emerson, "But that was on the project you were doing 2-3 years ago." Howland said it did not matter. Hewlett, "Oh was that when you were doing the house?" Howland, "Right. This is about the fill." Emerson indicated that this is a new project. Howland, "It is about the fill, though. There, that is your map. That is what Brackett went by, what I went by, and the DEP. When I called them, and sent them that information with the application permit, there was a lady who told me everything was great. You do not need a permit." Chair Cox, "But this is from two years ago." Hewlett, "So this was the house." She said some of the member were not on the Board back then and explained that originally, Howland was going to put a house there. But that was two years ago. Howland, "That is correct. But still it would not have mattered. In fact, the DEP guy, Dustin, he said it would be less impact with this than a house being there." Emerson, "He has to have the right papers coming to us to say yes, it is fine before we can go any further." Hewlett agreed. Brown asked if the application could be accepted as complete? Bly said sometimes we do it, contingent upon things. Chair Cox, "We could accept it as complete, contingent upon receiving the DEP letter."

On a motion by Brown, seconded by Hewlett, it was voted 5-0 to accept the application as complete, with the stipulation the Board needs the letter from DEP.

Howland said the town should have the prior permit on file because he could not have gotten the other permit without it. Emerson said based on the current information as of today, another application was needed because it was a completely different project. Howland, "I guess what I am saying is we all have done everything we were supposed to do based on the information we had, and then all of a sudden, something different."

Hewlett, "The good news is, we have just accepted it as complete, pending the DEP letter. So, you will not be coming back here."

Chair Cox said the town office had complaints that people did not receive adequate notification about the on-site and the public hearing. Gill asked if it was a legitimate complaint. Brackett said it did not get posted in the paper as timely as it should have due to a death in the area which struck the community, the fire department, and the town, hard. Hewlett said to be safe, we should have another Public Hearing because if the Board approved the application, then someone might appeal it. She did not think the applicant should have to go through an appeal if it was not, in any way, his fault.

Barstow said this could go on forever. There was a Public Hearing and everyone that wanted to go was at the public hearing. The Planning Board was backing this whole thing up because someone from the DEP interpreted, or maybe he even interpreted differently, and then puts out these emails, and now he has to go through this again? "We were told in February there was nothing to worry about, everything was okay. The only thing we had to worry about was the fact that when we were in Alabama was the fact that the fire department might want to do something. Then they said there was no problem with that. We have been to this office three times before we came to these meetings and asked him if there were any problems? There were not problems and every time we come here, there is more problems being created by your bureaucracy. This is costing money and time."

Chair Cox said she understood, and explained to Barstow the application was approved, contingent on DEP letter. Chair Cox, "I will say, you were given a whole list of things that we needed in February that we did not get." She explained it was difficult for the Board to make decisions because his plans kept shifting, but now he has a clear plan. "So, we have that. It is our job to get it and to follow the rules. I keep learning about that, but it seems that we are caught in a bureaucracy, and we have to do it. We want to work with you, we really do."

Brown said she remembered people at the on-site visit, complaining because there was not enough notification time. Hewlett, "And apparently, no fault of the Planning Board or the applicant. It was an administrative issue that did not go out in time from the town. That just leads to an appeal. That is almost an automatic appeal." Barstow, "That is his fault?" The Board said no, it was not his fault. Reinhardt said Brackett knows when that was published and whether it met the criteria or not. "Ask him the question. Did it meet the criteria of the ordinance?" Brackett said it did not get that in the paper in the correct amount of time. He thought it was a few days late. Reinhardt explained that if the notice was not published within the 10 days or 14, it could be a basis for a disgruntle person to file an appeal. Howland would then have to go through the whole thing, again.

Hewlett, "I think it is already in writing. My guess is, we have not received the onsite public hearing but it was mentioned at the on-site, so my guess it is in the minutes of the on-site, already." Reinhardt, "But it mentioned that person was there and they had notice." Hewlett, "But they said other people. She had talked to other people." Chair Cox, "She had received the notice the day before."

Reinhardt asked when Brackett talked with DEP regarding the fill and requiring a NRPA? Brackett, "July something I was asking if everything was okay." Chair Cox said that was a follow up. Howland said he never saw those emails. Brackett, "July 6, I sent an email and said Howland is on the agenda for the 11<sup>th</sup> Planning Board meeting in St. George. Is DEP going to require him to file a permit application to fill in the wetland? Will it be a NRPA permit? Would it likely be approved? If he needs to get a permit from DEP, I do not believe we should be issuing a permit for building on that property before Howland makes the DEP happy." Reinhardt said if he got a reply on the same day why did he not contact the applicant and say there might be an issue, so Howland could try to attempt to address it before the meeting? Brackett, "Things have been pretty hectic, and I have not tracked him down." Reinhardt, "He works up the street." Brackett, "Things have been very hectic here."

Reinhardt's summarization. "Regarding this DEP. He had a permit, just to clarify a few issues. He had a permit to fill for the house construction. The limits of the fill for the house construction are the same as the limits for the fill for his Tiki Hut. He has filled that. The fact that apparently has come up, and you granted him that permit, and the DEP said he has a letter. I have seen the letter that a permit was not required because it was not his limits of fill where non-jurisdictional. He was under the 4,300. That was a couple three years, ago. The fill limits are the same. He proposed to the property lines which he has. Apparently, the DEP guy was called by your CEO to come down and look at this. At that time, he thought he made the statement to Howland from what Greg had told me; I was not there, that he believed that the wetland maps were inaccurate that the town used. That maybe, he said, maybe he would have to apply for a Tier 1. Okay? A Tier 1 is basically a permit by rule and it is granted, 99% of the time. Now, why can't you go and proceed with this review and just make it contingent upon getting his Tier 1 permit. The Tier 1 permit will be granted. It is just a paperwork thing, if and we still do not know, definitively, whether he is going to have to have one or not, apparently from what Brackett said. They have not had a chance to decide."

Brackett said he had seen a Permit by Rule not be granted, too. We just had one recently. Reinhardt said they have to have a reason, and this was already granted once. Brackett said they did not grant him a

permit, he did not need one at that point. "I believe he has filled in more than what was on the original application." Howland, "No, I haven't. I filled in exactly what was on that map. That is all there is."

Chair Cox said the Board wants to get this cleared up with the DEP because of these questions and lack of clarity, then they can move forward. Chair Cox told Reinhardt, if they put him off, file the Tier 1 permit, so the Board can see that was filed. Hewlett said bring a copy or give it to Brackett prior to the meeting. Bly, "The Public Hearing and the Site Plan review could happen at the same meeting." Chair Cox, Yes. Good point.

A public hearing for The Happy Clam will be held on Tuesday, July 25 at 6 p.m. at the town office.

**b. Marshall Point Lighthouse Museum:** Nat Lyon represented the applicant. The application is to reconstruct a historic 18' x 25' storage barn at 178 Marshall Point Road. The property owner is the Town of St. George.

The Lighthouse Association hired Gartley & Dorsky Engineering to do their site plan and bid package. The elevations, site plan and the setbacks were on the plan. Gill asked if the St. George Historical Society was in agreement with everything? Lyon said yes. Bly asked if it had been figured out who owned it? Lyon said it was not a question of ownership; it was a question of jurisdiction. Hewlett asked if it had been settled? Lyon said to the best of his knowledge, it had been taken care of.

Brackett said from what he understood, the two parties had agreed and the attorney is reviewing it, but they did not have the copy back from the attorney. Brackett said when the copy comes back from the attorney, Mr. Skoglund would review it. Then, hopefully, he would sign it and the Lighthouse committee would sign it. Richard Bates, Select Board Chair, said they wanted to see this proposed project go ahead, but just contingent on getting the legal agreement, signed. Brackett told Bates the legal agreement should be signed before the application is approved because they need to have an on-site public hearing.

Hewlett said we need the lawyer's letter. Brackett said the Board could accept the application as complete, contingent upon receipt and signing of the letter from the lawyer. Hewlett asked, "No. 4 of Note 4, says no new walkways, driveways or parking areas. My only question is, what is that tan area? It looks like a walkway or driveway. Brackett, "A ramp to get into the door, I believe." Emerson, "It is a ramp. There is a little garage door-like." Lyon, "It is a ramp that goes into the sliding storage door." Hewlett pointed out on the plan where it said, no new no walkways but it appeared to be a walkway. Chair Cox, "That is a ramp that is stripped." Brackett, "Yes." Chair Cox, "The other, looks like a walkway." Lyon, "I can assure you, there is not a walkway." Brackett thought it might have been done for drawing purposes, and they were not going to have a walkway. He asked Lyon if that was what he was saying. Lyon, "Correct."

Gill asked if it was going to be earth and grass?" Lyon said it would be landscaped when done. Chair Cox, asked if she could put an "x" on the tan area to indicate no walkway, as per Note 4. Hewlett thought he would want that deleted, "Because don't you want to be able to drive up to this structure, if you are going to put things in it?" Lyon hoped the items going in would not be heavy enough to require a truck up back up to it. Hewlett, "But someone thinks you are going to have a door, a pathway leading to the door and also leading to the slider, according to the diagram." Brackett said it was not more than 10' from the paved parking lot. Hewlett felt having such a beautiful plan, it should be accurate. Lyon said this was what Gartley & Dorsky gave him. Emerson told Lyon he should check in with them and ask what was this and what was going on? Hewlett, "Especially, if they are doing a bid package because if I were bidding on it, I would assume you were going to have a gravel walkway or something." Emerson, "When we have our onsite inspection, then you will know – yes or no."

Chair Cox, asked if the Board wanted to accept the application as complete, pending the answer to the question. Hewlett felt the Board should wait for the answer about the walkway. Emerson asked if the application needed to be accepted, tonight and Chair Cox said it could wait until the next meeting. Bly, "And we want to make sure there are no questions like that the next time." Emerson, "People at the onsite may bring up questions." Lyon, "So, you are not going to accept the application as complete. We have to wait another two weeks. What else do you want from us?" Lyon said he had a schedule he was trying to complete.

An on-site visit was scheduled for Monday, July 24 at 5:45 p.m. Cox told Lyon if the application was accepted, they would immediately do the site plan review.

Lyon said he would try to resolve the concerns about Note 4. Hewlett and Brackett asked if the building could be staked out or paint the corners if the existing foundation could not be seen. Lyon said the weeds had grown up around the stakes. He would make sure they could be seen.

### **Marijuana Ordinance:**

The Planning Board reviewed information regarding a ordinance on marijuana. Brackett said since their last discussion, a number of towns have passed ordinances. He said the Board is not dealing with recreational or medical marijuana. It is the saleable products, the establishment of manufacturing facilities, retail sales, testing facilities, social clubs and cultivation of marijuana. Brackett said a lot of towns have completed a simple, one-page ordinance. He said this could be changed, after the state proposes their guidelines, rules and regulations. This simple ordinance would cover the town, in the interim.

Brown asked if there would be a town vote? Brackett said the process would be, if the Planning Board accepted the ordinance, the form could be filled in, stating the Town of St. George in the blank. It would then go back to the Select Board. If they approved it, then a Public Hearing would have to be held. The goal would be to get this to a Town vote in November. Hewlett asked if she thought the ordinance would pass, if it's proposed? Bates said many towns are saying fine; but we do not have the infrastructure, the deputies, nor do we have any enforcement.

Hewlett said this was not a personal use ordinance. It was strictly a retail ordinance. Brown reiterated it was retail. Brackett said it had nothing to do with medical marijuana. The state has arrangements for the legal sale of alcohol but none of those things are in place for marijuana, and until that gets put in place by the state, the town should not do anything. Hewlett said if we look at it in the sense that it can always be changed later on. But at this point in time, probably it makes sense, just to cover the town.

Brown said we can suggest it, but it would be voted on, anyway. Brackett said the Planning Board is the first step in this. Brown asked if the Board should just make a motion on this? Hewlett said we should look for M.R.S.A. c. 417 if we are going to do an ordinance. Brackett had a copy of the statute. Hewlett said it should be available at the town office during if anyone wanted to read them prior to the vote.

Bly asked why the Planning Board was involved in this? Brackett said the Planning Board was responsible for the ordinances. Emerson explained that the ordinance would go from the Planning Board, to the Select Board, there would be a Public Hearing, then it would get voted on in November. Bly asked if the Planning Board did not vote on this, it would not come up on a ballot? Chair Cox said the Select Board might do it, anyway. Chair Cox said it would come to us when somebody said I would like to have a retail marijuana store. Brackett said or you have five people come in and say they want to have social clubs. Are you going to issue one, four or issue five or issue none? Brown said we do not have an ordinance, for instance, by the school or any of those issues.

Chair Cox thought if this got voted down, the Board had a lot of hard work ahead. Brackett said the Public Hearing would probably tell you what people want. Bates, "Every town that has put this to a vote, has done one of two things. They have either adopted the moratorium; that is to say they, want to wait until the state has things in place, or alternatively, they have voted it down. The consequence is essentially the same for both because it can be overturned. Every town this came to a vote, has done that just because the towns do not want to be liable for any legal issues that come up when the state has gotten no guidelines, no infrastructure. The taxpayers could potentially be liable to all sorts of lawsuits if we get into contests about this."

Brackett said, for example, if you put a moratorium on for six months, at the end of six months, you have to show you are making progress towards the ordinance or it can be denied. Bates said he would hope if all the mechanisms are in place in the state, we could put it to a ballot again. He said it might be that somebody wants to do this, and we should not get in their way; but I think it does make sense to have mechanisms in place. Bates said there could end up being a lot of lawsuits and that could cost the town lots of money. Bly asked what kind of lawsuits? Bates said, for example, someone wants to set up a Bed & Bud and the neighbors do not want it. So, there could be a lawsuit against the town for denying it because there are no ordinances in place to deal with these issues. Brackett said the Planning Board had changed the Shoreland Zoning Ordinance a number of times; this could be changed.

Bly asked about retail marijuana cultivation facilities. "So, no one could cultivate it?" Brackett said six plants could be grown for personal use. Commercially, it would be banned until issues got straightened out. Chair Cox said it was more complicated than she thought. There are issues surrounding butane, CO2 and security issues. Hewlett said CO2 is a huge issue for the fire department because now "you are storing CO2, somewhere". Chair Cox said so what sounds like a simple little agricultural thing, it is not. There will have to be licenses issued.

Selectperson Willey thought the town needed to get working on this issue right away, as there was a facility being advertised in town as a large grow facility, not just six plants. The Planning Board was not aware of this. Willey said it is in the town, already. Hewlett said they have to come before the Planning Board. Willey said exactly, and if you do not have an ordinance, they can come before you and say that.

Chair Cox said they do not know how the state is going to regulate this yet, so that is why they want to have this in place. Bly asked about regulations and wondered if they would have the same ones as they do for medical marijuana? Emerson said no and Hewlett said it is totally different because it is retail. Chair Cox said they are waiting until they know what the state regulations are. She added, whoever wants the grow facility, is going to have to wait until the state makes a decision.

A motion was made by Emerson, seconded by Brown for the town of St. George to adopt the Ordinance Prohibiting Retail Marijuana Establishments and Retail Marijuana Social Clubs, and it be presented to the Select Board for their approval. The vote was 5-0.

There was no further discussion. At 8:20 p.m., on a motion by Brown, seconded by Hewlett, it was voted to adjourn the meeting, 5-0.

Respectfully submitted,

Marguerite R. Wilson  
Planning Board Recording Secretary