

**St. George Planning Board Meeting
7PM at Town Office and via Zoom
December 13, 2022
Minutes**

The Planning Board meeting was called to order at 7:00pm. Planning Board Members present were Chair Anne Cox, Anne Cogger, Richard Moskowitz, Michael B. Jordan, Jane Brown, Mary K. Hewlett. Also present were CEO Terry Brackett, Richard Bates and Ken Oelberger.

Present via Zoom were Loreen Meyer, Devin Prock, Dale Pierson and one other.

Quorum:

A quorum was present.

Conflict of Interest:

There were no conflicts of interest.

Adjustments to Agenda:

Chair Cox

I have a few adjustments to the agenda. Under other business, I'd like to flip the order so that we do Jones Brook subdivision zoning change as A and then do the ordinance timeline since Ken is here to speak to that. I'd also like to add D. Advertising Notice for Public Hearings and then E. Review of Upcoming Meetings because I know some people will be away.

Review of the Minutes:

Jordan moved to approve the November 13, 2022 Planning Board Meeting Minutes as corrected, seconded by Jordan, and by unanimous vote, the minutes were approved.

Cogger moved to approve the November 13, 2022 Planning Board Public Hearing Minutes for 61 Haskell Point Road in Tenants Harbor as corrected, seconded by Cogger, and by unanimous vote, the minutes were approved.

Hewlett moved to approve the Planning Board Findings of Fact for the Port Clyde General Store (2,4 and 6 Cold Storage Road) as written, seconded by Cogger, and by unanimous vote, the minutes were approved.

Hewlett moved to approve the Planning Board Findings of Fact for the Seaside Inn (5 Cold Storage Road) as written, seconded by Cogger, and by unanimous vote, the minutes were approved.

Public Comments:

There were no public comments.

Building Permits:

Nickolas Dicke at 61 Haskell Point Road in Tenants Harbor, Map 219, Lot 76

Chair Cox

This is an application permitting a pier constructed by Prock Marine Company for Nicolas Dicke, on Haskell point Road. We accepted the application as complete in November and we did not believe we needed to have an onsite; we had a public hearing, but no one attended. Mr. Prock, do you want to say anything to refresh us on this?

Devin Prock

First, I want to apologize for not being at the last meeting, I was in the hospital, and I have been recovering. Thankfully, I can attend this meeting and get going on this again. Basically, Nicholas Dicke wants to add onto the side of this pier, a six-foot wide by 10-foot long landing, and then hang his existing ramp on that and install two float piles where it is shallow, to eliminate the need for moorings and chains. The landing will help with getting his parents down to the boat and he intends on using a golf cart to help get them down to the end of the pier and give them more room to walk around.

Chair Cox

We spoke about this at the November meeting. Are there any more questions? It is pretty clear to me.

15C of the Shoreland Zoning Ordinance, Piers, Docks, Wharfs Bridges

The Board made the following findings of fact:

1. **No more than one pier, dock or wharf is allowed on a single lot.** On a motion by Jordan, seconded by Brown, the Board found by a unanimous vote that the plans call for only one pier.
2. **Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.** On a motion made by Jordan, seconded by Hewlett, the Board found by a unanimous vote that the entire structure shall be built only by access from the water by use of a barge.
3. **The location shall not interfere with existing developed or natural beach areas.** On a motion made by Jordan, seconded by Hewlett, the Board found by a unanimous vote that the addition to the pier will be cantilevered from the existing structure and will not touch the ground, and the new float piles will be in submerged land.
4. **The facility shall be located so as to minimize adverse effects on fisheries.** On a motion made by Jordan, seconded by Brown, the Board found by a unanimous vote that the replacement of moorings and mooring chains with float piles will have no effect on fisheries, even assuming there are fisheries in the area.
5. **The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A temporary pier, dock or wharf in non-tidal waters shall not be wider than six feet for non-commercial uses.** On a motion made by Jordan, seconded by Brown, the Board found by a unanimous vote that the dimensions of the pier are no larger than necessary for handicap accessibility, the pier remains consistent with the surrounding character and use of the area, and it is in tidal waters.
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.** On a motion by Jordan, seconded by Brown, the Board found by a unanimous vote that no such structures are proposed.
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*.** On a motion by Jordan, seconded by Hewlett, the Board found by a unanimous vote that the pier is in tidal water.
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. On a motion by Jordan, seconded by Brown, the Board found by a unanimous vote that no such structures are proposed.

- 9. Except in the General Development Districts and Commercial Fisheries/Maritime 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.** On a motion by Jordan, seconded by Brown, the Board found by a unanimous vote that no such structures are proposed.
- 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.** On a motion by Brown, seconded by Cogger, the Board found by a unanimous vote that there is no vegetation that will be removed, and construction will only be accessed by barge.

On a motion by Cogger, seconded by Brown, based on the foregoing findings of fact, the Planning Board concluded by unanimous vote that each of the requirements of section 15C of the Shoreland Zoning Ordinance either has been satisfied or is not applicable and therefore the application was approved.

Jones Brook Subdivision Zoning Change

Chair Cox

I thought I'd go over a little history. Justin Long, who owns the property, and Will Gartley requested that the Planning Board recommend changing the zoning for Jones Brook from Resource Protection to Stream Protection. They say the reason for this request is that it would change the shoreland setback requirement from 250 feet from Jones Brook to 75 feet. This is on land that Justin Long owns that he is subdividing and developing. This zoning change, he believes, would allow him to further subdivide a particular lot to allow more houses. The request is based on the fact that the most recent mapping that the Maine Department of Inland Fisheries and Wildlife has done has changed the outline of the area that is designated as Bird Habitat in the vicinity. Mr. Long and Mr. Gartley would like to see the Resource Protection Zone follow the more recent mapping, which is a little smaller than the older mapping that was in existence when the zones were established and when Mr. Long bought his property. Ultimately, any change in zoning designation would need to go to a town vote.

Cogger

Could he still develop but not as extensively?

Chair Cox

He can still develop. If this change were recommended it would require a town vote because it would change our ordinance. We are being asked to recommend this change and then refer it to the Select Board. We have not had a formal application, but we have had a request for a recommendation. When we first received this request, if you recall, we suggested that the Conservation Commission look at the issue and make a recommendation to us and Michael Jordan met with them. We revisited the topic on our July 12th meeting of this year and suggested that Justin Long and Will Gartley be in touch with the Conservation Commission. Since that time, the Conservation Commission has been doing a lot of work to evaluate the site. Michael and I met with the working group that has been paying attention to this on December 1st and looked at what they had to show us. Ken Oelberger, who is Chair of the Conservation Commission has some great maps to show us. He is here to tell us what they found and their recommendation to us. After Ken's presentation, I'm going to ask Michael to talk us through how their recommendation meshes with our ordinance and specifically, we'll be looking at section 13 of the Shoreland Zoning Ordinance.

Moskowitz

Are there other similar designations that have changed in town, based on those updates that were referenced?

Chair Cox

I am not sure and we didn't ask them to look at those. His mapping will show it, but that is not what we've been focusing on. It's just this one particular instance. Ken, would you talk about this.

Ken Oelberger

Since you asked us to review this back in July or August, we took this seriously and had to decide how to approach it. The first thing we had to do was get some details on the mapping that existed. The town did not have a digital map of the Resource Protection Zone or the Digital Shoreland Zoning Map available for us. We had to work to get that in history and then we became familiar with the various pertinent sections of the ordinance that we would be looking at. We worked closely with the Knox County EMA GIS specialist, Leticia Van Vurren to help us with the mapping aspects of it. She had been working on shoreland zoning and sea level rise mapping with the towns, so we were familiar with the capability that existed. She was able to identify the appropriate maps that we would need for comparison purposes. Subsequently I'll show you the maps; I'll demonstrate those shortly. The Conservation Commission walked the property on two different occasions to try and get a lay of the land and understand what we're looking at from the ground, and not just from the maps. As part of the Digital Demonstration of the maps, I'll zoom into the area of interest, and I'll add a layer that shows the property lines.

Chair Cox

Do the slides show cutouts in the subdivision and not the two additional plots that he owns?

Hewlett

I think those are two existing built properties that he owns, and they are occupied.

Jordan

This is the subdivision, and these are two existing lots that are part of it. He owns them, and they are built on and occupied.

Hewlett

They were in existence before he came to us for the subdivisions.

Jordan

Those are two of the nine lots that would be included in the subdivision.

Ken Oelberger

What I'll bring up next is the current Shoreland Zone map, showing the Resource Protection area and the green outline is the current Shoreland Zoning Map.

Cogger

What does the red outline designate?

Ken Oelberger

Red means it is Marine Residential and then the gold stands for Stream Protection, going back into the area where the town forest is.

Ken Oelberger

Next, I'll show the piece of property that they are requesting be relaxed, based on the Inland Waterfowl and Wading Bird Habitat, which is just one type of criteria for Resource Protection. The blue outline is a section that the Maine Department of Inland Fisheries and Wildlife established in 2008 for Inland Waterfowl and Wading Bird Habitat. The other piece of interest is the area that is designated as wetlands, because wetlands is critical for resource protection. The wetland area continues down the length to Route 73 and is the area of concern and should be resource protected.

Jordan

The request was to convert that area from Resource Protection to just Stream Protection.

Hewlett

And Wetlands Protection.

Ken Oelberger

Based on this information, and the fact that it is still wetlands there, the Conservation Commission is recommending that it stay under Resource Protection. Michael can explain how that fits into the ordinance as well.

Jordan

Thanks Ken. We're looking at section 13 which begins on page 10. Section 13A defines Resource Protection Districts. The part that has been cited to us by Mr. Long and Mr. Gartley is in Paragraph 5E at the bottom of page 11 and applies to areas close to wetlands rated as moderate or high value waterfowl and wading bird habitats, including feeding areas as rated by the Department of Inland Fisheries and Wildlife, which is what that entire area was rated before. The DIFW removed the area we are discussing now from their rating in 2008. That is the basis for the request.

Cogger

The town did give an augmented rating on that because it was concerned.

Jordan

I'm not sure whether the town ever reviewed it after they changed the rating. I was not here. What I did find when I read through the rest of the ordinance, and this would take us to Section 13E on page 13 which defines a Stream Protection District. I'll read this aloud. I'm going to skip words that are not related to the kind of water that we're dealing with here, I will skip references to ponds, streams, etc. The first sentence describes the Stream Protection District to include all land areas within 75 feet of horizontal distance of the normal high-water line of a stream, exclusive of areas that are 250 feet from the upland edge of a freshwater wetland. Stream Protection Districts are within 75 feet of a stream but exclusive of areas that are 250 feet from the upland edge of a freshwater wetland. The second sentence goes on to elaborate that when a stream and its associated shoreland area is located within 250 feet, horizontal distance, of the above wetlands, that land area shall be regulated under the terms of the Shoreland District associated with that wetland. The length of Jones Brook to the northeast and southwest of that segment are freshwater wetlands. The area that we are talking about now, which is that area to the south, is within 250 feet of those wetlands. Those wetlands that run from southwest to northeast are still Resource Protection because they still meet the wading waterfowl and bird test. As I read the ordinance, the area we are talking about now is within 250 feet of a wetland that is rated by the DIFW and that is Resource Protection. In fact, it's part of the same wetland. The way I read 13E is that the area in question shall be regulated under the terms of the Shoreland District associated with that other wetland which is Resource Protection, so even if the zoning of the piece in question was changed to Stream Protection as requested, it would still be regulated by the same test, which means going out 250 feet, and so it would achieve nothing to rezone that area.

Hewlett

Could we even rezone it based on everything you just said? What would be the rationale?

Jordan

The rationale suggests this is not required under Section 13A and 5E or all the other sections.

Chair Cox

If we turned it into Stream Protection, we still would have the same 250 foot setback requirement.

Hewlett

In researching this I found a document, which was just put in my folder here, dated 12/30/15 and it is from Significant Ecological Area Listings, Town of St. George, Conservation Commission. This was obviously given to the Planning Board in 2015.

Chair Cox

It was and it is listed in the Comprehensive Plan but not as an area that has been recommended for protection in the Comprehensive Plan.

Hewlett

For Jones Brook, Long Cove and adjacent islands, the rationale is that they have all been listed.

Chair Cox

I do not think they technically have.

Jordan

We can consider that if we needed to, I suppose. If I'm reading this right, even if the town decided to give Stream Protection zoning, it would not help justify development at all, because it would still be subjected to the adjoining wetlands.

Chair Cox

We cannot recommend it. We do not have an application or something formal that we are responding to. It is just what a recommendation would be.

Hewlett

I do think with this information, we can certainly acknowledge that the wetlands exist.

Chair Cox

Am I getting the sense that we are all in agreement with Michael's reading of the ordinance here? I'm not sure procedurally what we should do. It is disappointing that Will Gartley and Justin Long are not here to hear this.

Hewlett

Were they invited?

Chair Cox

I had asked for them to be invited, but I guess they weren't invited. They were not told about it. We need to make sure they know what we are talking about and go through it clearly with them. Maybe we should write something up for them and be willing to sit down and talk to them.

Hewlett

The wetlands map would be helpful for them to see.

Chair Cox

We can sit down with them, or we can invite them to our next meeting, if they want to come talk about it. Terry, do you have any thoughts on this?

Terry Brackett

I think that we can certainly write something up and present it to Justin. We don't have a formal application anyways. If he wants to share that information, he can.

Chair Cox

Will you give me Justin's contact information and email and address.

Terry Brackett

I have a telephone number and tax bill address.

Chair Cox

That would be helpful and maybe Michael and I could write something up.

Chair Cox

Thanks for this. The Board needs to know that the Conservation Commission really worked on this and delved in at a granular level to figure this out.

Ken Oelberger

I didn't do it alone. I had a lot of help.

Hewlett

We appreciate all your work.

Ordinance Timeline for Town Meeting Vote

Chair Cox

The Ordinance revision is another place where a lot of work has gone on. Michael has put everything together and has referred it to our attorney.

Jordan

The status is that I finalized the draft and sent it off to Colin Clark, the Shoreland Zoning contact at the Department of Environmental Protection for the Central Region, which includes us. I spoke to him on the phone before I sent it and he agreed to give it a review before we take it to the voters so that we do not end up having the voters approve something that does not work. I sent it to him a couple of weeks ago. When I spoke to him earlier, he expected that he could look at it within a week or two; that would be sometime next week, if he can manage it. Our schedule has enough room in it that if he does not come until after the first of the year, we are still okay with the schedule. From there, it is a matter of making whatever adjustments are needed to deal with any issues he has, and holding at least one informational meeting in February with the town to let them know what we are doing, what it is all about and to see if we can get some reactions that would suggest the need for adjustments in order to please people and educate them to what is going on.

Cogger

Is that a request to have someone proofread it?

Jordan

We would have a meeting and it would be available. People could read it and they could ask questions and state their concerns. We did something like this two years ago with the ordinance for the offshore wind business. We had a meeting, which was well attended, and people had questions about what we were proposing to do. We made some adjustments on the basis of what they said before we took it to a formal public hearing.

Chair Cox

I think we would not only listen to this review, but we would talk through a few of the pieces and give a presentation, making clear where we have made changes. The bulk of it has not changed.

Moskowitz

Could we present a synopsis of the changes; a summary would be helpful?

Jordan

Yes. I've already drafted something that needs some refinement and maybe a few changes, because we might have done a few things differently since I wrote it a few months ago. Basically, it is a short list of things that would be substantive. None of them are particularly dramatic but are based on issues that we have seen in applications that seems to have coverage gaps. The basic purpose of it is to make sure everybody can find everything in one place, and not forget to look at the sign ordinance, for example. It would also resolve some inconsistencies and make it a little more readable by dividing it up, adjusting the format, and so forth. That is the purpose of it. Then we will take it to a formal public hearing around late March and to the ballots in early April and have a vote on it in May. If it seems like it would be useful during April, we will have an additional opportunity to hold informational sessions at which we could try to sell it but we can decide later whether that seems like something we want to do. We won't be able to make any significant changes after the public hearing. Assuming that works, then next year we will work on the subdivision ordinance. We just could not fathom how we could get it done as part of this exercise?

Chair Cox

The subdivision ordinance is arcane.

Chair Cox

Under other business, Item C, was the Remote Meeting Policy. Mr. Jordan was looking into it and found out some things about the policy.

Jordan

I was looking up some law relevant to the subdivision ordinance question and I found this Public Meeting Policy. If you remember that came up last year. We adopted a policy because the legislature authorized us to do so. The other day I discovered that the legislation for these things has been amended in a way that I wanted to discuss with you and see if there is anything we ought to do about it. The original legislation, and therefore our policy, stated that a meeting could be held entirely virtually, if there was an emergency of some kind, such as a public health emergency. It could be that an individual member could be excused from attending in person, and could attend remotely, if the member is unable to attend a meeting in person because of a significant difficulty traveling to the meeting location due to illness, or a temporary absence. The legislation has been amended to remove those requirements so that a policy could provide for a member to attend remotely just because they felt like it. The question is whether we should amend our ordinance to provide for that. Chair Cox and I discussed this. Our take on it is that there is a value in meeting in person, and that we should encourage it and not let members to attend remotely because they feel like it. I think we should keep the exceptions for illness and for being out of town but additionally allow for concerns about health issues, particularly communicable disease issues that might result in a danger to themselves or a danger to the other members if they were to attend. If somebody had symptoms or maybe even just exposure to those symptoms.

Cogger

Or if someone was getting chemotherapy and did not want to get sick.

Chair Cox

Does our current policy allow for that?

Jordan

If the illness made them not to able to comfortably attend, I guess it would qualify; chemotherapy depresses immune responses.

Briggs

If attendance poses a significant health risk, as opposed to an illness might be a way to word it.

Cogger

We do have people come to our meetings to make public statements occasionally and not everyone is computer savvy, so to have that option is important in a small community.

Jordan

This legislation is just about members. Policy says that members of the public can participate remotely.

Chair Cox

I think we need to update it a bit.

Jordan

I will take care of it.

Advertising Notice for Public Hearings

Chair Cox

An issue that has come up a few times is the advertising notice for public hearings. We have had a habit of believing that we need to advertise the public hearings in the Courier Gazette, and tied the dates of our meetings to their schedule. It turns out that we are not required to advertise in the Courier Gazette. We are required to make sure the public knows about the meetings. Michael, you have the language I think

Jordan

The statute says that the notice shall be given in ample time to allow public attendance and shall be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction which is a pretty loose standard. Currently, besides newspaper advertising, I think we put it on the website and also

send it out to anybody who has subscribed to an email blast, notification, etc. In the case of any site plan review, or any on site visit, we send it to the neighbors by mail. The question is whether that is enough. What I would like to suggest is for the next several public hearings or site visits, we ask the people who show up whether they found out about it from the newspaper or some other way.

Briggs

There is also the St. George Message Board on Facebook or something like that,

Jordan

There may be other places we can post it where we are not; places that are free and requiring less notice.

Cogger

It would be good if it was on the message board and if it was clear where the information we publicize is located.

Hewlett

You would still need to be computer literate.

Cogger

I'm thinking we could start these meetings by saying they are publicized.

Briggs

I think you are saying some people don't read the newspaper online.

Cogger

Yes.

Jordan

I don't read the Courier Gazette online, but I read it on paper. I don't look at the advertising. I don't look at the legal notices. That will help us to decide if we abandon it, whether we would meet the statute.

Cogger

What is that schedule? How does it work with the Courier Gazette? How much time do you have to give them?

Terry Brackett

It must be in by Monday for Thursday's paper.

Chair Cox

It ends up taking two weeks to schedule a hearing; it backs everything up. Otherwise, we could do it in a week.

Bates

Does the Bangor Daily News or the Portland Press Herald have an easier schedule and is it less expensive?

Cogger

Which one is most read here?

Bates

That is the question we need to ask. Where do people get their news.

Hewlett

Let's ask people how they heard about this. I definitely think that notifying neighbors in the 300-foot radius around an applicant's property is very important.

Jordan

We will keep doing that.

Bates

A Facebook page would be an account that the Planning Board took out that didn't involve any comments, just notifications.

Jordan

We might consider doing that as another way to disseminate information.

Bates

(inaudible) using Facebook, disseminating information. But I think it's really critical that it is understood from the beginning, we are not soliciting comments.

Hewlett

Someone might copy and paste it, and then start a comment, but that would not be officially on our Facebook page.

Moskowitz

Notices are posted at the office. Are there any other public posting places like at the library or the post office?

Jordan

Not that I know of.

Brown

The Community Development Corporation.

Chair Cox

Our experience has been that people come if they have a vested interest or concern, if they are abutters, or if their neighbor talks to them. It will be interesting to talk to people. Who is going to sort of investigate this possibility of Facebook?

Hewlett

St. George Message Board?

Chair Cox

Is this something that Magan would be able to administer?

Brackett

Tara, Magan or Bill.

Jordan

Probably the same person who sends out the emails can do the posting.

Hewlett

Do you have to repost it every single day?

Chair Cox

You just do it once.

Jordan

To be completely clear about this, there is one exception when state law does require you to advertise, and that is if you are holding a public hearing on an amendment of a zoning ordinance. The public hearing for the land use ordinance will require not one, but two advertisements. One at least twelve days in advance and the other at least seven days.

Review of Upcoming Meetings

Chair Cox

For the next meeting on December 27th, do we have anything critical to discuss?

Terry Brackett

I'm working on something, but it is not time sensitive.

Chair Cox

Could we possibly do this the way we did it for Thanksgiving? If an issue comes up by next Tuesday, and it is a time sensitive issue, then we will have a meeting on December 27th and otherwise we will not. For the next set of meetings on January 10th, January 24th, and February 14th, Kate will be away. Allison will be away on January 10th.

Cogger

On February 14th, I will not be accessible

Chair Cox

I just wanted to check in to make sure that we will have enough for a quorum.

Adjourn

On a motion by Cogger, seconded by Brown, the Board decided by a unanimous vote to adjourn the meeting and at 8:09p.m. the meeting was adjourned.

Respectfully submitted,

Tammy Taylor
Recording Secretary
Town of St. George, Maine