

Southwest Harbor Planning Board
March 6, 2008 at 6:00 p.m.
Southwest Harbor Town office

MINUTES OF MEETING

I. Roll Call: Molly Lyman, Carolyn Maling, Anna Demeo, Chair,
Dennis Dever, Vice Chair, Chris Rawls, Sharon Howard, John Carr
The meeting was called to order at: 6:00 p.m.

Visitors: John Kelley, Peter Lord, Jim Getz, Greg Johnston, Kristin
Hutchins, Lee Worcester, Jean Marshall

II. Visitors to be heard not on the Agenda: none

III. Workshop, Southwest Harbor Land Use Ordinance

a. Administrative Procedure: Moved Molly and Seconded Sharon to approve as presented 7 - 0

b. Review Authority: moved John and Seconded Chris to approve the final wording voted on Jan 2008 7 - 0

c. Exterior Lighting – DISCUSSION:ANP – John Kelley, Peter Lord, have been before comp plan to discuss this issue – in terms of ordinances, all towns are working with this and they wondered if it was possible to have further discussion prior to Tuesday cut off date. Peter may be able to provide simple language that would address this situation. Chair: this has to be looked at more thoroughly in future. Is there anything in this particular wording that you could provide now. Peter: most ordinances, roadway lighting is not dealt with on a town level – interpretation is that lighting being approved by the town – light trespass - advise most towns not to tackle the roadway lighting, and would trump most anything you would write anyway – address only what is being put up under your authority. This wording is fine. Molly: has reviewed lighting ordinances and found lighting improvement framework – this is now a first step for outside criteria relating to neighboring properties. Reference CES last time, this is not recommended as safe for walkways – and wonders if this is too strict. Peter – this is light trespass – you don't spill light onto adjacent properties - this ordinance says don't spread light further than needed. This is standard

lighting that affects neighbors only. Sharon: there were no measurable standards – CEO said this was a standard that was normal. We are not addressing streetlights. Jim Getz: is there any thought as to the amount of time a commercial light can be left on after business hours when there is no service available. Chair – this is something to be addressed in the next go around. Paul agreed – recommend the board think about this in a future change. Question on the table is exactly what a good lighting ordinance is to be. ANP offered their expertise with Peter's in the future to assist with the more expansive ordinance.

Moved Sharon Seconded Dennis to accept the change as presented 7 - 0

d. Wetland Definitions: Chair – we have a letter from a residence that was read. Sharon – erroneous information in the paper – has copies of the Maine State Statute regulations this will bring us into compliance with the State. Dennis – correct – however, forested wetlands are treated differently by the state. Sharon – doesn't necessarily make it a 75' set back – we are bringing our definitions into line with the state – checked many ordinances on the state web site – 16 all have the definitions as we presented. Dennis – by changing the definition, we have in effect made it the 75 foot set back referring back to our LUO which is written to include forested wetlands and automatically you have a set back through that of 75'. John – one of the places we ended up was that we do want to change the definition but we may want to look at the definition of a forested wetland – this is sprinkled through the ordinance. Chair – these will be clarified as we comply with the Shoreland zoning over the summer. Molly – there is a great deal of forested wetland in southwest harbor and it seems that 75' may be a little prohibitive for many people – other point was that if you have a freshwater wetland and a forested wetland it is possible to end up with a huge setback that would impact any type of development of a lot. Kristin: in looking at suggested language on the state site – it clearly defined forested wetland as a type of wetland not the same as other wetlands. Lee: public meeting was concerned with the implications that are apparent throughout the rest of the ordinance that makes the setbacks prohibitive. Kristin – COA maps indicate wetlands only and not forested wetlands. For future reference. Jean: original changes to the ordinance didn't include forested wetlands – that arrived two or three years later. Ordinance as it stands now is in compliance with the Shoreland ordinance and is exactly what the State says – freshwater wetland excludes any type of forested wetland. This was added when the State required it. Original LUO did intend to say a setback is 75' back from a wetland and that will include forested wetland. It has

always been there. Chair: clarified that the PB is not changing anything . Lee – all of SWH is not in a shoreland zone – a lot are well outside Shoreland zones and don't border anything – this appears that those types will be included. Molly – we have to take this in the context that if in fact the ordinance change impacts a house going onto a lot next to a lot with forested wetland – it meets the criteria for a BOA variance. There is a safety net. John: the intent was fine – but as the layers peeled away, this became more complicated – and would suggest tabling this. Dennis agreed. Sharon disagreed – the setbacks have always been there and the board has always dealt with them in this manner. No one excludes it from the definition and we should go with this. Overall impact can be very dramatic. John – agrees but thinks it should be done correctly to allow passage. Dennis agreed it is flawed. Molly – John, if in fact one of the problem is there are too many places where setbacks effect this – does this mean the board must address all the ordinance changes that would be required. Anna: if these changes are in fact just clarifying the language to reflect what the town has always done she would support it. Things shouldn't change from year to year – is that the case? Molly – storm water run off is a major problem and impacts the wetlands. Demeo: general regulations page 3 – define forested wetlands. Jean – what does this do that the current definition does not. Jean does not see what this ordinance is changing – John – perhaps the definition change should be: but do not include forested wetlands when calculating : Rick Evangelista: owns moving company has 10 acres – surveyed for three buildable lots – how will this impact me? It also appears that if this passes and it does constrict everything by 75' it is a severe restriction on building which will have a huge impact on taxes, and the voters. Carolyn: if it's not broken, don't fix it – having Jean explain the circular loop – were we interpreting wrong? leave it the way it is but change: 'but they do not include forested wetlands when calculating the 10 contiguous acres'. John recommended withdrawing the wetland definition changes and removing the cross out and adding (Carolyn worded) when calculating the 10 contiguous acres. Moved Carolyn and Seconded Molly to accept as amended the change to Section 13 definition b words and terms: last section to be changed to fresh water wetlands. Vote in favor: 6 – 1 (Dennis)

e. Buffering: Moved John and Seconded Dennis to accept the proposed changes as amended this evening . 7 - 0

f. Accessory Storage Structure: Discussion of motorized vehicles resulted n removal of the beginning of number 6 to say: “no noise shall be allowed to emanate...” Jean discussed the problems in number 3 and 4 as she perceived them. Chair suggested voting as is, changing , or

withdrawing. Suggested by Dick – between the house and a public right of way Moved Anna and Seconded Dennis that the LUO change for Section 3E be accepted as amended; Strike 3 4 and the beginning of number 6 to read: no noise shall be allowed.. Vote: 4 – 3 (passed)

g. Certificate of Occupancy : Section 1, 5 – at the end of the section where it says: and other applicable codes of the jurisdiction Board Members questioned whether those codes should be listed. Chair – Building permit already required it was agreed under number 5 to end the entrance at ordinance permit., moved Molly seconded Chris as moved. 6 – 1

Moved John and Seconded Chris to accept the proposed creation of Section VIII as presented in Jan 2008 amended section I 5 to remove the end of the sentence and change number 6. Vote 6 – 1 (Sharon)

h. Section XI, Procedure for Amending the Ordinance\ -

Discussion: this is at the recommendation of MMA legal and puts the procedure in line with state standards. Moved John and seconded Chris to accept as presented 7 – 0

Lee: ; general comment – putting something in front of the public to “see what they think” – he feels that is a poor policy.

Select Tuesday night meeting – these will be presented. Molly: PB would add to a newsletter if there is one going out before the Town meeting.

Break 7:30 pm – the meeting convened at 7:40 p.m.

IV. Applicant: Town of Southwest Harbor, 178 Clark Point Road, Map 4, Lot 33, Zone: Commercial Fisheries/Maritime; Purpose: Lower Town Pier Expansion: Gene Thurston – said that as he reviewed the application some of the numbers are wrong – Structure dimensions should be changed from 18’ wide to 24’ wide and length change from 20’ to 50’. Also Downeast Diesel was omitted from the Abutters List and therefore was not notified. The application cannot be heard until DE Diesel is notified – rescheduled for the 20th of February – abutters will be notified again.

V. Other Business - Select meeting - be there at 6pm although the actual meeting will be starting at 5pm Tuesday the 11th – Saturday March 8th – can’t walk through if there is snow – if so , assume it is cancelled. Alternate “snow” date would have to be 29 March at 8:30 a.m. McCarron property. Next agenda will be Town Pier and begin Shoreland zoning review section by section. Note: update on the Great Harbor Marina – CEO said it is

Harbormaster jurisdiction, no need for the Planning Board to hear this application.

VI. Adjournment Dennis moved and Sharon seconded to adjourn the meeting at 8:10 –p.m.

The public is encouraged to attend this meeting.