

April 3, 2008



MINUTES OF MEETING
The Southwest Harbor Planning Board
April 3, 2008
6:00 p.m.

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

Visitors: Robin Bennett, Town Manager; Trudy Bickford, Chair, Board of Selectmen, Mike Young, Sewall Co., Engineers; Gene Thurston, Harbormaster

III. Visitors to be heard not on the Agenda: Mike Young, Engineer, for James W. Sewall Company is developing the plans for the new Police Station. In preparation for permitting submission to the DEP, he explained that Sewall is just getting into the process of design for the Police Station and had a question on parking. Mr. Young showed site plans that indicated the 48 parking spaces in existence now – they would like to keep the spaces the same at 48 and have calculated the needs of the Fire Station and the Police Station with the assistance of Donald Lagrange, CEO for the Town of Southwest Harbor. Mr. Young referred to a letter from the CEO that indicated the Fire Station actually only needed 16 spaces; Sewall recognized that there has not been a formal application to the Planning Board yet, but would like the Planning Board to review the letter from the CEO and indicate whether there were any glaring errors, so that Sewall may proceed with the design and DEP application. John Carr excused himself as an abutter; Rawls indicated it looked fine, Dever indicated it looked fine; Howard indicated there was no guarantee on a favorable decision; Demeo

April 3, 2008

said the Board, after the hospital project has decided to do walk throughs on all big projects and will schedule that upon receipt of the application. There were no other questions. The Board Chairman told Mr. Young, with caution that the Planning Board saw no problems at this time.

IV. Continuation – Lower Town Pier Expansion, Applicant: Town of Southwest Harbor, Map 004, Lot 033, 178 Clark Point Road; Zone: Commercial Fisheries/Maritime; Purpose: expansion of lower town dock pier. Thurston circulated a larger plan for viewing purposes. He explained the project was an application for State funding through DOT up to \$94,000; it is a \$200,000 project and the remainder will be taken to the Town meeting for funding. Thurston told the Board that the project will be a wood piling foundation with cement perform cast top; it will be cantilevered on the West side and will land on 3 floats. Maling had questions as follows: referring to page 3, existing and page 4, proposed – on proposed, regarding the 4 floats – what does “existing” floats mean? Thurston explained that they are not new, and that the 4 floats and the finger float are owned by the Town currently. Maling asked if the existing gangway float etc. is Downeast Diesel. She also asked about lots 31 and 32: Thurston explained that lot 31 is Downeast Diesel and lot 32 is Yates. Location of all abutters was confirmed. Ref: lot 33 – lot lines were clarified. The top of the granite wall indicates the existing town piers – they will not be widened. There has been a gentlemen’s agreement on the finger float that has been part of the Downeast Diesel reparian rights – this will be handled now by an attorney and an easement will be granted. With the float in question gone, the Town will still be within 25 feet of Diesel’s reparian rights. In the proposed plan, the East and West float is gone – it will be moved up under the gangway. Demeo asked about the easement – Thurston said the Town will come within 25’ feet of Diesel’s reparian line. Lyman said the Board has to look at reparian lines on the site plan even though there may be an easement. Maling wants to see a copy of Spoffard’s (Downeast Diesel) approval (included in the easement) and a site plan showing the reparian lines. This will be in the motion. Demeo began the Board’s review of the application for completeness. Some changes were noted: structure 1 dimensions altered and an abutter was added to the end of the project. Comments: page 1-none, page 2: Carr noted dimensional structure change 24 x 50 labeled pier; The list of completeness issues were reviewed: federal, State and local permits list was reviewed. The flood hazard permit was included in the packet; Mailing asked if there was a need for submerged land use – Thurston said yes, in the Army Corps permitting but that will not be pursued until is it

2/23/2009 3:15 PM

April 3, 2008

known whether or not the Town has approval from the voters, and that includes DEP permitting as well. Thurston will provide the list of permits needed to the Board. Continuing – the Board asked about lights on the new structure. There have been none discussed, but Thurston conceded that lighting should be addressed, and he will work with the engineers on appropriate safety lighting which will be submitted to the Board. Thurston circulated page 21, section 5.0 permitting which listed MDEP, ACOE, MDOC, MDMR, MDIFW, MNAP, MHPC, NMFS and USFWS permits, comments and recommendations needed. Demeo said the site plan consists of pages 1 – 6 which is not unreasonable considering the size of the project. Dever suggested removing the lighting pole in the middle of the existing parking area and putting a simple light in the southwest corner to allow for safety during low tide when the gangplank will be in shadow. Thurston recommended the Board add that to part of the decision. Page 4 was replaced with page 7 and the board marked changes on that. Construction plans: this is covered under marine development and marine structures. Noted: that riparian lines should also show the easement. Marine structures page 5: subsection 7 J and N as described in the SWH LUO: this will be looked at under compliance. Moved Molly: that the SWH Planning Board finds the application of Town of Southwest Harbor dated 1/22/08 to expand the lower town dock, to be complete pending the following additions: site plan showing riparian lines, the Spoffard easement, the easement be shown on page 7 site plan, that the following 9 permits MDEP, ACE, MDC, MDMR, MDMIFW, MNAP, MHPC, NMFA, USFWS and submerged lands be included, and also the placement of the new light which would be shielded on the southwest corner of the dock be added, as well as sewer and water lines be shown on page 7. Seconded John 7 – 0 in favor

Compliance Phase: Federal regulations and standards: the board reviewed and found it ok; Lot standards – minimum lot size was reviewed – none; Lyman said the Board must look at the public bathrooms, and the question was if they were A.D.A. compliant and on the drawing as a structure. The dimensions of the bathrooms and distance from all the lot lines should be listed – Thurston said the bathrooms were in existence prior to 1982. Carolyn pointed out that even though the bathrooms were prior 1982 they are still a non-conforming structure, and requires the review under non-conformance. Thurston will provide structure dimensions and set backs from the lot line. Carolyn: under structure standards, be careful of normal high water – the elevation on pier construction would need to be indicated. Change the n/a in that section to 0k.

April 3, 2008

Non conforming: all items checked 'no'.

Performance Standards: lighting – pending CEO approval of lighting plan with shielded light in the southwest corner. This is a condition of the application that CEO approve the lighting plan. The board needs the dimensions of the ramps – the engineering firm will have the appropriate ADA requirements in the design. Amending completeness – dimensions of ramp; for compliance an engineering statement indicating the ramp dimensions(including width); Carolyn suggested asking for an opinion from the CEO concerning ADA compliance and dimensional requirements of the pier. Engineering should show the CEO to his satisfaction and in writing to the file, the ramp dimensions and compliance. CEO should put his opinion in writing to the file.

The float moorings will be added on by Thurston; What activities will the town permit and expect on the wharf – Thurston 90% commercial fishing – to improve the low water capabilities. Activities at the public dock were discussed. Is the 6' mean low water line shown – Thurston it is just to the southwest corner of the pier.

Amendment to the completeness motion: It was moved Molly that the previous motion for completeness to include that the bathroom structure placement and set-backs be shown, the dimension of the ramps be shown and that the securing rigging be shown on page 7 of the site plan. Seconded Sharon 7 – 0 in favor

It was moved Molly that the PB find the application by the town of Southwest Harbor dated 1/22/08 to be in compliance pending the CEO' written approval of a lighting plan including a placement of a new shielded lighting plan on the pier extension and a written opinion from the CEO that the ramp is ADA compliant and pending completeness seconded Dennis 7 – 0 in favor.

V. Shoreland Zoning Ordinance Workshop: 8:30 p.m. Demeo proposed not working on Shoreland Zoning but still discuss Land Use Ordinance. Review was given of the events from the Select meeting, including Attorney Ross & King letter review. Meeting between the Town Manager and Town Attorney concerning allegations from King that the LUO notices were improper resulted in the Select meeting deciding to table the vote until the June election. MMA opinion is that there can be no June ballot because of the timing notice requirement by the current Southwest Harbor LUO. Suggestion to come before the selectmen and request the LUO changes be put back into the warrant as a vote on the town floor. Discussion – Sharon

April 3, 2008

asked if it were possible to ask the town to hold a special town meeting that meets the time frame. Chris asked if the CEO knew of this turn of events and asked how this will affect him. Molly agreed that asking for the ordinances to be put back into the warrant is right. Intent – is for the most turn out. Dennis questioned the notification timing; Bennett said the board acted on legal advice, and the selectmen did not need to have a public meeting. John Carr expressed strong personal emotion at not being able to defend the PB to the selectmen. Molly stated that in her long time working with various boards, this select board has been the most supportive, and taken in that context, but this seemed like a total communication breakdown- there are a variety of legal opinions, and the town's attorney's opinion has been in error many times before. Trudy said the board didn't have any information or knowledge of this at 6pm when the selectmen meeting started, as the town manager was still consulting with the legal representative. Demeo cautioned the board that this discussion should be held with the selectmen. Dever suggested sending the letter with some editing. Request that the ordinances go to a town vote; actions and how they affected this volunteer board; there is no one in this town government that knows how to administer this LUO; John suggested the ramifications this has on the work load – citing the Shoreland zoning changes that are mandated. Carolyn said it brings up a question of support. Sharon said that this group has worked well, been productive, and would hate to see all that disappear; November is a big election and there is time for this to be advertised. There will still be a public meeting 14 days prior to the vote. Anna said April 22nd would have to be another public hearing if the Select board agrees to put the ordinance vote on the floor. Molly said going to the board should include the Town attorney relationship with the board and their opinion of his representation.

Chair: summarized the things that must be decided upon tonight. Sharon – however the board votes we should be unanimous. John agreed. Sharon and John thought there were merits to having the LUO changes coming up in November. Anna – we will not be able to talk about the ordinances on the floor in November; Molly – depends on the select board but she thinks the town floor the sooner the better – the people that are at town meeting are invested in the town.

Bennett pointed out that the MMA attorney mentioned the second public hearing was a concern. Demeo said the opinion was that it would have been fine anyway, but there is time to do the last public hearing and the second public hearing must be 13 days prior. Bennett said the board did feel they

April 3, 2008

were supporting the planning board and they specifically said they know how hard the planning board has worked on this. Sharon: it's not a bad thing to do this in November, and cannot stress enough that there just are not enough people at town meeting to have this fly. John asked if the board could do both – if it doesn't pass on the floor in May, bring it back in November. Moved Molly seconded Carolyn that the Planning Board request by letter that the Board of Selectmen reinstate the proposed Land Use Ordinance changes on the warrant for the Town meeting on May 5th Vote in Favor: 5 – 2.

Draft of the letter to the Selectmen was reviewed: get the changes to the voters, disgruntlement toward the board, and the town attorney issue. Dennis feels these are separate issues. Sharon disagreed. Carolyn suggested the goal of getting the ordinances on the floor for a vote, is the main objective. John suggested addressing just the request to have the ordinances reinstated and voted on the floor. The board generally agreed to the first paragraph of the draft letter. Sharon reiterated need for a planning board.

Site walk on Saturday morning at 8:30 a.m. meet at the Village Washtub to walk the McCarson property.

VI. Other Business – Public Notice for April 22, 2008 advertise 12 days in advance April 10th and BDN –discussion was held on the timing of the public hearing. April 21st is the meeting and it must be published on the 8th and 12th in the Bangor Daily News: Public hearing on the proposed Southwest Harbor Land Use Ordinance; full text of ordinances available at the Town Office. 6:30 PM ON THE 21ST. Confirmed attendance will be Dennis Dever, Molly Lyman, Carolyn Maling, Chris Rawles

VII. Adjournment It was Moved Sharon and Seconded Dennis to adjourn the meeting at 8:55p.m.