



Planning Board
Town of Southwest Harbor
MINUTES
June 5, 2008, 6:00 p.m.

I. Roll Call: Anna Demeo, Carolyn Maling, Sharon Howard, Dennis Dever. Excused: Chris Rawles; Molly Lyman (Lyman arrived at 6:50 p.m.) John Carr has resigned as a member of the Planning Board. The meeting was called to order at 6:10 p.m.

Visitors: Greg Johnston

II. Review Minutes of Meeting(s): 15 May and 1 May, 2008: It was moved (Dennis) and seconded (Sharon) to accept the annotated minutes of 5/1/08 and 5/15/08. Vote in favor: 4 - 0

III. Planning Board Term Limits 2012 Carolyn Maling will re-term this year for 5 years – term ending 2013 rather than 2012. Recorder will notify Town Clerk and have her prepare documents for the Board of Selectmen's approval.

IV. Applicants:

1. Continuation: CES, Inc., Agent for Timothy Gott, 110 Bass Harbor Road, Map 15, Lot 78, Zone C; Purpose: after the fact permit for addition of approximately 4350 cu yds of fill with access driveway. Chair said there is a letter from DEP, a letter from MMA and a response to the MMA e-mail from Anna Demeo. Copies of all three items were distributed as needed. The board was asked by the Chair to review the three documents. Recap – last meeting this applicant was heard the board was trying to determine the status of the fill of the lot – the board asked DEP to investigate and make written comment and they did. Howard asked CES why the DEP site visit was held without the planning board. Johnston said that it was not requested by the Board, and we can review the tapes. Chair confirmed that the Planning Board requested to be present during the dep visit and CES is welcome to review the tapes to confirm that if they wish. The board thought the last time this applicant was heard was in February. Howard – does inert fill include solid waste? CEO said that the MMA included inert fill in the definition

of solid waste. Inert fill is usually clean fill, and yet it is part of solid waste. He believes that inert fill shouldn't be solid waste. Our ordinance allows inert fill by permit. He said the selectmen has the authority to enforce all the state statutes, but has not given the ceo the authority to enforce all state statutes. Chair asked CEO, if DEP dug the test pits or whether they were dug while the DEP person was present when they dug the pits. CES said the pits were dug before DEP arrived. Chair reminded the board that they had to be unanimous to move forward as there were only 4 members present. Dever said it appears that inert fill could be considered solid waste, but does it fall under the technical definition of solid waste. The DEP letter indicated that the small quantities of piping and debris were minimal and they stated that the majority of the fill is inert fill and fine. CES concurred. Howard expressed disappointment again at the Planning board not being at the DEP test site, and wondered if that could be re-done with DEP. Chair said the DEP letter should be addressed now, and if the board felt that they would want to request another DEP site visit, the DEP would have to agree to come back down. Chair asked if the Board is satisfied that the DEP has signed off on this test pit site letter to their satisfaction. The letter was read allowed into the minutes. CES pointed out that the comments from the DEP were not limited to the test pits, and that is important to remember. The DEP walked in and around the site. Dever is willing to accept the DEP letter. Maling said that in terms of the MMA and DEP letter, it is hard to ignore, and she accepts that. Demeo feels also that it was obviously clear that the Planning Board wanted to be present with the DEP during the inspection – and is grudgingly willing to accept the DEP opinion.

It was moved (Carolyn) and seconded (Dennis) that the LUO permit application dated 11/8/07, of CES Inc. agent for Tim Gott, to apply for the addition of approximately 4350 cu yds of fill with access driveway be found complete. Discussion: Sharon asked if all other board members are satisfied with the DEP letter. Chair said that the Board should not be rushed as this is an after the fact permit, and no plans for development have been put forth. CES pointed out that the MMA letter indicates if the town doesn't have an ordinance that deals with the solid waste issue, it falls to DEP – and DEP has Ok'd the fill at the site. Dever – if the Board decided to call this solid waste it would be contrary to all prior applications that have been allowed. The Board did receive the information requested, including an extrapolation of the contour lines. Chair discussed the hydric soils map, exhibit 5; CES said the overlays onto the tax map resulted in a discrepancy. The white only indicates there is not vegetated cover. Chair reminded the Board that there is a motion and second. all in favor 5 – 0

Compliance Section was reviewed by the Planning Board.

General regulations and standards, page 3:

Non conformance – all NO

Landscape and Buffering –

Driveway and Driveway opening – Maling asked why the driveway was so long 76' – CES said to join Jody's acres to the top of the fill takes 76'. Also to avoid being too close to an abutting property owner.

Erosion and sedimentation control – Maling pointed out there is a plan in the application. CES said it will be permanently stabilized with vegetation.

Exterior lighting NA

Fill and excavation: Chair referred to page 28 of the SWH LUO - CEO said before the fact there would be no way of knowing what the completed slope would be and an inspection would have to be undertaken. CEO will review the site to be sure that it meets the LUO. Demeo asked: when it comes to fill, the 4350 cu yds, how was the number determined and how much faith can be put on the number. CES said taking the topography of what's there now and where the ground is along the area. Demeo pointed out that the 4350 cu yds is calculated on the premise that the lot was flat and straight sided, CES said the number presented is the best estimate. CEO said, if there was 6300 cu yds, and the lot was still level and not creating drainage or other problems for abutters, and the last time he was at the site it appeared level, but there were mounds of dirt on the side by the Clark property.

Fire protection NA

Flood hazard NA

Handicapped access NA

Heavy industrial pollutants – ok

Noise – ok

Parking & Loading NA

Roads – NA

Sewage disposal NA

Soils - NA

Storm water run off – CES explained rerouting some of the areas to avoid water run off to neighbors. OK

Stream standards – there is a stream to the southeast – it is on the abutters property. Ok

Vibration NA

Water quality NA

Water supply NA

Chair asked for a motion: It was moved (Dennis) and Seconded (Molly) that the application of CES, Inc. agent for Tim Gott , for 30 Jody's Acres road, after the fact permit for 4350 cu yd of fill and a driveway, be found to be in compliance with the SWH LUO with the condition that the slope does not exceed 2:1, that the fill is inert, that the lot be vegetated and that it require a permit from the CEO and a certificate of occupancy upon completion . Discussion: Anna Demeo reviewed the notes that she had from HCPC and DEP for the Board. Vote in favor 5 – 0

The board took a 10 minute recess at 7:40 p.m.

The meeting re-convened at 7:52 p.m.

V. Other business – Shoreland zoning – Sharon to e-mail members the Shoreland ordinances that will be reviewed at the upcoming meetings. The board members will have reviewed the ordinance changes stipulated by Howard PRIOR to the meeting at which they will be addressed.

Next Agenda – the Comprehensive Plan committee will join the next meeting to discuss their recent survey – and the Pettegrow application will be heard, as well as addressing the Shoreland zoning changes stipulated by Howard.

CEO said that he has a new application that he would like to go on the 19th July agenda. Chairman said that board has a process that has been agreed upon – Carolyn was asked to put in writing within 14 day the items that are missing from the application. Recorder will assist with the letter and mailing. Dever pointed out that the Board goes to one meeting in July and August. The July meeting will be the 17th of July. CEO asked when there will be a determination on buffering level. Discussion was held on the fact that buffering is not on the checklist that the Planning Board uses. Lyman pointed out that the CEO needs a guideline with examples. Lyman will write the letter and e-mail.

Next agenda:

June 19th is the next meeting:

Agenda items:

Comp Plan

Shoreland Ordinance

Pettegrow

Buffering Letter

Discussion: short a member and would like the Selectmen to take action at their next meeting. Anna will e-mail the Town Manager and ask that the Selectmen consider appointing a new member in order to guarantee a quorum at summer meetings.

Sharon reviewed the timeline that she had been asked to put together that addresses a lighting ordinance change. Chair said this would be discussed with the Comp Plan next meeting.

Howard had questions for the CEO – there is an encroachment over the property line at Phillips Lane – what is the remedy. Howard also asked what is going on at the Crafts property. CEO said he is watching it. There is a permit for a single family house.

VI. Adjournment It was Moved Dennis and Seconded Carolyn to adjourn at 8:21 p.m.