

**MINUTES OF MEETING**  
**Planning Board – October 15, 2009**  
**Southwest Harbor Town Office**  
**6:00 p.m.**

I. Roll Call/Call to Order: The meeting was called to order at 6:00 p.m. Present: Chris Rawls, Bob Bosserman, Gordon Wissinger, Lee Worcester, Ryan Donahue, Ed Davis, Code Enforcement Officer Donald Lagrange; Absent: Michael Magnani;

Visitors: Andrew McCullough, Jeff Crafts, Andrew Hamilton, Marc Chalfoun, John Pottle, Greg Johnston, Kristin Hutchins, Eric Reinholdt, Dorothy Worcester, Warren Worcester, Mike Gillis, Muriel Lindquist, Mrs. Kruder, Mr. Mansolilly.

II. Visitors to be heard not on the Agenda: Kristin Hutchins provided the Board members with new language in the Volunteer Guide from the Board of Selectmen. She asked for feed-back from the Board.

Approval of minutes of September 17 and October 1<sup>st</sup>. It was Moved Rawls and Seconded Davis to accept the minutes of September 17<sup>th</sup> presented, Vote 5 – 0 – 1 (Abstain Donahue). October 1<sup>st</sup> minutes. It was Moved Davis, and Seconded Rawls to accept the minutes of October 1<sup>st</sup> as amended. 4 – 0 – 2 (Donahue & Wissinger).

Andrew McCullough was asked to present his findings from his third party review of the Village at Ocean's End. McCullough, when first meeting with the Planning Board, reviewed the work he was expected to perform in the review. The Board had asked him to look at things like watershed division and do the flow paths make sense, etc. Mr. McCullough said the bottom line is that the design preparation does make sense, including the modeling of the storm water for the existing and proposed development. McCullough said that, in a site like this he uses a GPS unit as he walks the site. He feels comfortable that Johnston used the appropriate maps and data available, but also checked that information to make it more real to the site. The discussions held included the concern and/or problems experienced last year on 9/7/09, and it was an event worse than a 100 year event – could that be the worst we see? Unknown. If things are stable during an event like that, and is above and beyond what is called for anywhere in the ordinance, or a project submitted to the DEP, after reviewing Johnston's data, it shows that the run off is contained in the project and not sheeting off to the abutter to the south. The charge is to protect the abutters and follow the ordinance, as well as provide the developer a stable site – McCullough felt comfortable saying the water is contained on the site. A couple of other concerns noted in the initial correspondence were: Day Zero Plan: if nothing else ever happens; and the Phasing Plan: what needs to be provided for a certain number of houses to be built, to protect abutters during a storm event. McCullough noted in his letter, the Day Zero Plan is suitable and Johnston has submitted calculations supporting the requirement that they are not increasing peak flow to the abutter to the south. The Phasing Plan makes sense for the site as it is broken down to indicate what is required in each phase. In reviewing the notes and erosion control plan there were only two comments: McCullough recommended a better definition of rip rap, preferring the jagged stone. In the construction notes: a definition of the stone should be listed as it comes out of the Maine DEP manual, but also the jagged rock material locks together better than round rocks; the other recommendation was, in addition to water as a dust suppressant, McCullough recommended incorporating calcium chloride

or another suitable dust suppressant for this type of application. Day Zero and the Phase Plans were found suitable. Storm water calculations for 9/7/09, were discussed. McCullough had reviewed the two year return frequency storm event calculations, and briefly wanted to review that to verify that the applicant is reducing peak flow during the two year event for the abutter to the south. It is McCullough's opinion that they are doing that. Information requested from the developer was a typical road section and has received that and reviewed it. Another item that McCullough checks for when he is designing, is the very long-established set of standards originally from Soil Conservation Service for Ponds, that have been in use now for over 40 years, maybe longer, and with few changes, they address the side slopes on the ponds, the berm width on the top and emergency spill way design. They are conservative design standards that were implemented across the country in the late 60's and early 70's. One of those standards is that there is a minimum of 1' of freeboard in a 25 year event, so the pond is not lapping over the top during the event. Greg Johnston has certified in his response to McCullough, that this is the case and Johnston has provided numbers to support that. One other recommendation from McCullough is that Maine DEP will be reviewing this and also be issuing a permit (s) for the project, and they will have standards to be met that will be incorporated into their permit. McCullough recommends on site inspections weekly and during storm events during times of site work construction, and to verify that the erosion controls and storm water controls are stable and ready for a storm event, or any clean up or remediation has been taken care of if there has been a storm event. He also recommended that possibly the engineer or Code Enforcement inspect these things – and that happen once a month to verify that the elements of the plan continue to proceed as they need to, so that there are no sediment issues, or other issues of that nature. Those things will be incorporated into a DEP permit, but the Board should decide whether or not to contingent the actual approval process on that. He said a certain amount of inspections will be needed to be sure the plan is implemented the way it is envisioned at this time. In summary, McCullough said that Johnston took a very professional and conservative approach to preparing the plan, and it is a suitable plan for the project.

Discussion: Bosserman asked how one explains the damage to property as described by Western Way Condominiums? How does one judge what is causing that problem. McCullough said currently we have "Day Zero" – certain things have been recommended in that plan that need to be implemented in order to provide the level of comfort level of which you are speaking, as well as what the abutters are asking for. That is the step that needs to be taken. The Board has not seen the phasing plan or what was approved up to this point, said Johnston, and McCullough has a copy. That will go to the CEO and then to the Board. Johnston said the Day Zero plan will handle this and will need to be implemented. Bosserman asked if on day one of the approval, something will happen that will mitigate damage to the abutter's project. Johnston said that the commitment is to implement the plan immediately upon approval and have 60 days to complete the work. Wissinger asked how this would help the project if there is an event before the 60 days for completion has passed. CEO said with the single structure up there now he would accept the conditions that exist now. All that he has done thus far is related to that permit. A representation with a single family house does not come with these specifications. Johnston said the major difference is the site has been seeded and re-vegetated since the event in September, and the additional day zero plan is more than adequate to handle events of this type. Worcester asked if the Phase Plan, the Day Zero Plan etc, all meets muster – McCullough said it does. Rawls asked where the monthly inspections and storm inspections were to be filed – McCullough said they should be filed with the CEO and be part of the file. Johnston said submissions will have to be made to Maine DEP as well. The Board thanked McCullough for the report.

III. Robert & Melanie Lawson: Map 1 lot 81 – Harbor Zone – demolish and re-construct. It was Moved Wissinger and seconded Donahue that the application is complete. Vote in favor: 6 – 0. Rawls asked if there were any wells. – CEO said it is not required – Applicant said it is Town Water. Compliance: Wissinger asked about the calculations – the actual area is 467 (net increase); It is within 250’ of the normal high water; CEO said on the site plan the calculations are available and can be amended to include driveways on the application. Wissinger asked why lighting is N/A in some cases, but there is a reference to lighting – CEO said it is his standard procedure to add lighting stipulations in the event they surface later in the project. No other questions on performance standards. It was Moved Donahue and Seconded Bosserman that this application is in compliance with the LUO with the condition that the lot coverage be calculated to include all impervious areas, and lighting should be indicated on the sight plan and it will meet the criteria outlined in the ordinance and be shielded. Discussion: The excavation will be implemented to extend the crawl space frost wall and will only disturb a piece of the driveway and some lawn area – no other vegetation will be disturbed. CEO said the applicant should contact him prior to proceeding with construction. Wissinger asked if erosion control would be an issue. CEO said there is little problem anticipated – there is one small area where hay bales will need to be placed, but all in all, the site is level. Donahue withdrew the motion and Bosserman withdrew the second. It was Moved Wissinger and Seconded Donahue that this application is in compliance with the conditions that performance standards items A through U, except items D & E, are not applicable, and that performance standard E does require that exterior lighting shall be shielded to prevent direct light from being visible beyond the property line and designed to minimize adverse impact on neighboring properties; and that performance standard D, Erosion and Sedimentation Control, be implemented so that all areas that will result in un-stabilized soil conditions will have erosion and sedimentation controls according to DEP Best Management Practices prior to the start of construction and that the lot coverage be calculated to include all impervious areas. Vote in favor: 5 – 0-1 (Magnani).

IV. Landscaping: It was Moved Davis and Seconded Donahue that this application is complete. Vote in favor: 5 – 0-1 (Magnani)

Moved the application to be in compliance:

It was Moved Davis and Seconded Wissinger that the application is in compliance with the conditions that performance standards items A through U, except items E & L, are not applicable, and that performance standard E does require that exterior lighting shall be shielded to prevent direct light from being visible beyond the property line and designed to minimize adverse impact on neighboring properties; and that performance standard L, Parking and Loading Standards be met in that the parking area indicated on the site plan will remain free from storage of plants and supplies with ample area equivalent to 12 parking spaces. Discussion: Marshall asked what was happening to the site where the greenhouses are being removed; CEO said there is no damage to the site; Worcester asked if there was a demo permit – CEO said these are temporary structures and usually do not require a demolition permit. Davis pointed out that there is no foundation; Donahue said removal would likely improve the drainage on the existing property. Vote: 5 0 1 (Magnani) in favor.

V. Marc Chalfoun: Wissinger asked whether he should be excused as they are direct competitors. The applicant and board agreed there is no conflict of interest and Wissinger should hear the application. Chalfoun described the project and indicated it was in Zone A. It was Moved Bosserman and Seconded Davis that the application is complete. Discussion: Wissinger asked if

all clearing was staying within the red box identified on the plan. Chalfoun said the structure will be on posts about 2' high – no insulation no drywall; He has spoken to Cullen of DEP and sees no problem with the building. There will be no fill, and they will dig to ledge (very close to the surface). Vote 5 – 0 – 1 (Magnani) in favor. Compliance: the structure provides less than 6 months residence: It was moved and seconded that the application is in compliance: Performance standards: Wissinger said the calculations for the structure are listed as more than they actually are. Review indicated the east-facing deck was not depicted on the drawing. Chalfoun will make corrections. Worcester asked if there was adequate parking for all the uses on the plot. Wissinger asked if the spaces being represented are being taken from another cottage area. Chalfoun said the spaces are new spaces. The Board asked the CEO to confirm the deck square footage and parking spaces. Storm water run off will include hay bales to avoid sediment run off. There is ample room in the retention pond to handle run off. The Board discussed a condition that the site plan be updated to indicate the individual addresses of the units; that the deck be indicated on the drawing and it's orientation be drawn on the plan; and lot coverage be verified; that parking be verified; Bosserman asked if there were any concerns that should be considered since this is a condominium project – CEO and Board chairman agreed there was no concern. It was Moved Wissinger and Seconded Bosserman that the applicant make appropriate adjustments to the site plan, verify parking, orientation of the deck, rectify the addresses on the drawing to conform to the application, and verify the square footage, and that this application be continued to October 29, 2009 if presented complete, and if not, continuation will be to the 19<sup>th</sup> of November. Vote 5 - 0 – 1 (Magnani)

VI. Village at Ocean's End: Bosserman asked about the venue for the meeting of the 22<sup>nd</sup> and 29<sup>th</sup> of October. If space is not available at Southwest Harbor's Fire Station meeting room the Board would like to reserve the Legion Hall. Walsh will make arrangements and notify the Board. Hamilton spoke for the VOE and said the CEO memo provides a good way to track this process. Item 1 – letter provided from Hamilton saying preliminary plan application materials contain the majority of the final plan application. Notebook containing the final plan was provided to the Board provided by Johnston. Preliminary plan approval has been incorporated. See memo of October 15 from CEO. The set of plans provided by Johnston incorporates all the concerns from the third party engineering review by Andrew McCullough. Bosserman asked for copies of the letter from Johnston and those were circulated. Reviewing the letter Bosserman asked about the letter of credit. Hamilton said that a condition of approval will be that the Letter of Credit be provided to the Town. Johnston provided copies of the Day Zero plan and Phased Storm Water plans to the Board. Abutters requested copies of each of those letters. The deeds will be recorded and referenced on the final plat. The Board reviewed the information provided and found all components available. It was Moved Wissinger and Seconded Rawls that the VOE final plan has been received by the Southwest Harbor Planning Board who deem it complete. Discussion: Bosserman asked about the chases being shown on the plat. Johnston said representation has been made into this portion of the application and is part of the record, but does not typically get recorded on the plat. Vote in favor: 5 – 0 – 1 (Magnani)

IX. Adjournment 8:48 p.m.