

**REGULAR PLANNING BOARD MEETING
TREMONT COMMUNITY BUILDING
TUESDAY, MAY 17, 2005
6:00 PM**

AGENDA

1. CALL TO ORDER

Chairman George Urbanneck called the Planning Board meeting of Tuesday, May 17, 2005 to order at 6:10PM.

2. ROLL CALL

In attendance were Chairman George Urbanneck, Planning Board Members Jim Keene, Linda Graham, Mike Ryan, Town Council James Collier, CEO Millard Billings and Recording Secretary Heidi Farley. Members of the public were Linda Higgins, Heath Higgins, Wayne Libhart, Doug Chapman, Edward Fielding, Robert Wilson, Arnold & Reva Weisenberg, Diane Miller, Tim Butler, Bryon Butler, Jeff Crafts, Greg Johnston, Glenn Squires, Josh Butler, Carroll Butler, Peter Butler, Nancy Elliott, Wayne Davis, Maynard Young, Marybeth Judy, Will Stroud, George Gekas, Mike Ross, Andy Harris, a Stenographer hired by Attorney Chapman and Mark Good of The Mount Desert Islander and six other people not identified on sign in sheet.

3. ADJUSTMENTS / ADOPTION OF AGENDA

None

4. APPROVAL OF MINUTES

A. Minutes of April 12 & April 26, 2005 Planning Board Meetings

April 12, 2005 Minutes already approved at last meeting. Chairman asked if anyone had any comments about the minutes. Linda Graham noted that on page 4 under CEO issues the word "look" should be taken out. Jim Keene mentioned that on page 2 under 4, Approval of minutes, before the words "Blueprint" and "Survey" it should say "the word" and that the words "Blueprint" and "Survey" should be in quotations.

MOTION Linda Graham made a motion to accept minutes of April 26, 2005 with changes, second by Jim Keene. Motion passed with a show of hands 4-0.

5. SUBDIVISIONS

A. Completeness of Application – Richard and Jean Quandt, owners; Linda Higgins, agent Map 3 Lot 4, Limited Residential Shoreland & Residential Zones, Application is for a 5 lot subdivision, the owner will retain the 6.85 acre parcel on the shore in the Limited Residential Shoreland Zone and will offer for sale the four lots proposed to be subdivided in the Residential Zone. Lot 1 is .96 acres (41,817.6 sq. ft.), lot 2 is .86 acres (37,461.6 sq. ft.) lot 3 is 1.34 acres (58,370.4 sq. ft.) and lot 4 is 1.51 acres (65,775.6 sq. ft.).

Chairman George Urbanneck went through the completeness of application form with Agent Linda Higgins. The Planning Board requested the following items need to be included either in the application or on the Plan:

1. Copy of the 100-year floodplain elevation
2. State soils survey
3. Indicate the Zone in which the subdivision is located
4. Location of abutters across the road
5. Right of Ways
6. Easements
7. The location of the abutter's wells and septic systems or note none within 100 feet.
8. Any Restrictive Covenants
9. Tax Map and Lot numbers
10. Indicate that all lots contain 40,000 square feet

Mrs. Higgins stated that all of the above would be on the updated survey being prepared by Tom Benson.

6. NEW BUSINESS

- A. Michial Jewett for William Baker Map 15 Lot 2 Harbor Shoreland Zone, request to install a Private Walkway and Float to be in water during summer months, not to exceed seven months, both sections will be brought ashore and stored during the winter months.

MOTION Linda Graham made a motion to table this item pending review by the Harbor Committee, Jim Keene seconded. Motion passed by a show of hands 4-0

- B. Michial Jewett Tremont Flood Hazard Development permit for William Baker Map 15 Lot 2 Harbor Shoreland Zone, request to install a Private Walkway and Float to be in water during summer months, not to exceed seven months, both sections will be brought ashore and stored during the winter months.

MOTION Linda Graham made a motion to table this item pending review by the Harbor Committee, Jim Keene seconded. Motion passed by a show of hands 4-0

7. OLD BUSINESS

- C. A. Greg Johnston of CES, Inc. representing Robert Egbert is requesting that the application for construction of a pier on the Cape Road be placed on the Agenda.
 - 1). Letter from Deborah B. Wilson, Archaeological Consultant
 - 2). Letter from Carol DiBello, Submerged Lands Coordinator

Greg Johnson and Jeff Crafts from Civil Engineering Services (CES) set up a display of the Egbert Pier project for everyone to see.

Doug Chapman, the Attorney representing the members of the Paine Family who are abutters to the Cape Road Pier Project, stated that he has filed a memorandum stating that no notices have been sent as required to the abutters. Mr. Chapman said abutters were unaware of the hearing tonight, and stated that owners of all surrounding properties could not be present. CEO Millard Billings explained that when the

application came in notices were sent out, prior to the February 8, 2005 meeting. Since then only Planning Board meetings have been held, no Public Hearings have or had been scheduled for the Egbert Pier, just regular Planning Board meetings, when Public Hearings are scheduled they are advertised in the newspaper. Chairman George Urbanneck asked if proof of notices were available. CEO said, "No but we know they got them because Elliott Paine called the Town Office and he did receive one." No copy of receipt at this time. Mr. Chapman stated that in the Town Ordinance in Section VII, D, 10, a. page 37, Planning Board will send notices within 35 calendar days when there is to be a Public Hearing. Jim Keene asked, "what is purpose of talking about this at this point, I don't see that any request has been made to make a decision on this, isn't there proposed work to be done before we can come back and make a decision, CES just asked to be put on agenda." Mr. Chapman said that before a decision is made there needs to be Public Hearings. Mike Ryan asked for Mr. Chapman to explain his definition of Public Hearing. Mr. Ryan then explained that this is not a Public Hearing it is a Planning Board meeting. Mr. Chapman, "So this is not a Public Hearing." Mike Ryan said, "Not to my understanding." George Urbanneck asked Mr. Collier, the Town of Tremont Attorney, if we should have announced this meeting other than the usual postings. Mr. Collier quoted page 36 of the Ordinance Sec VII, D, Subsection 5, timelines to finding completeness. Sec VII, D, Subsection 10 page 37 before that completed applications back to subsection 5, 7 page 37 when application is complete it will be so noted on the form. Mr. Collier asked, "Has this application been determined to be complete?" George Urbanneck answered that he believes so. Mr. Urbanneck then said, "No I take that back I think we are still waiting for The Historical Preservations findings." Mr. Collier said, "Either it is or isn't" Mr. Collier asked, "Yes or no." Mr. Urbanneck replied, "No I don't believe we ever made the determination of completeness." Jeff Crafts of Civil Engineering Services representing Rob Egbert believes that on the February 22, 2005 meeting the application was deemed complete upon the Planning Boards receiving the archeological report submitted 3 weeks prior to their next meeting. Mr. Collier said that "the application sounds like it is not complete so Mr. Chapman's point is moot in a sense until it is determined a complete application. Mr. Chapman was referring to Public Hearings within 35 calendar days in Section 10, a, after determination of application being complete. Each Public Hearing requires an abutters notice be sent for each Public Hearing. Subsection 9 says that the Planning Board can have workshops at scheduled Planning Board meetings. First determine if complete, if not, no Public Hearings are needed, if it is complete, send notices within 35 days. In the interim the Planning Board can have workshops. The application cannot be submitted for a Public Hearing at a workshop because no decisions can be made, just fact finding." Mr. Michael Ross, Attorney for Mr. Egbert said that at the February meeting the application was conditionally complete. Both documents requested have been submitted, now the application should be complete. Mr. Crafts read aloud from February 22, 2005 Planning Board minutes under "New Business, motion made by Jim Keene, second Galen Warman to accept application as being complete with the Army Corp of Engineer Survey and the Historical Preservations findings. Motion passed by a show of hands 5-1". It was noted that Army Corp of Engineers is a typo in the minutes it should have been submerged lands survey. Mr. Crafts pointed out

that they have submitted an Army Corp of Engineers report as well. Mr. Chapman said that Section 8 says that the CEO shall send notice within 35 days to abutters. Mr. Collier stated in response to Mr. Chapman that "section 8 isn't relevant because this is not a CEO issue it is a Planning Board issue." Mr. Collier pointed out that this board is not held hostage to its decision, under Roberts Rules of Order the Board could vote to rescind motion; they are not bound to completeness. Mr. Collier stated that he believes that the right thing to is take in new information and reconsider motion but that does not go along with the meeting of what is going on here, Planning Board needs to make determination. George Urbanneck said that the Board just received Historical Preservations findings tonight. Mr. Collier said that "the Board can approve completeness tonight, then give notice to abutters and schedule Public Hearings within 35 days." Arnold Weisenberg said that he believes the Maine Department of Conservation letter is a preliminary letter and he doesn't think the Board can consider it in determining that the application is complete. He believes public comment could cause them to reconsider this. George Urbanneck said that the Board did receive, from CES, the final report from Maine Historical Preservation Committee Letter dated May 10, 2005 to Mike Ross and the Board accepted it as written (see attached). Mike Ryan asked if April 22, 2005 letter is the letter you are referring to. Mr. Urbanneck stated "that is the submerged lands letter." Mike Ryan asked, "Do we need approval from the Department of Conservation." Mr. Urbanneck said "no, historically, normally, at times the Board gives conditional approval; generally we do not like to give conditional approvals. Where we stand right now is we have the last piece of the puzzle. Treat this meeting as a workshop." Mike Ryan asked if the Board has to have May 22, 2005 letter. Mr. Urbanneck answered that it is not a mandatory vote of the board as to whether they want to see it or not. Mr. Libhart said that he had no problem with the Public Hearing conditional approval, but he stated that he believed the May 22, 2005 date is important to the applicant, because of the notices to abutters. Mr. Collier said the Town will publish notice in the paper if application is voted complete, then the next step will be advertising the Public Hearings, Mr. Libhart agrees. Mr. Urbanneck, "let's finish this up, any questions from board? Is everyone satisfied, would anyone like to make a motion that the application is complete?"

MOTION by Chairman George Urbanneck with a second by James Keene that pending the submittal of the findings of Maine Historical Preservations that the application for Robert Egbert for the pier is complete. Motion passed with a show of hands 3-1. Linda Graham, Jim Keene and George Urbanneck voted in favor, Mike Ryan against.

Mr. Collier stated he would like to respond to an earlier question from Mr. Libhart, "to answer Mr. Libhart the ordinance is very clear about abutters notices being sent at least a week ahead of time."

Mr. Johnston would like to submit the Army Corp of Engineers permit that they just received.

The CEO told Mr. Urbanneck that he could get notices in the paper May 26 & June 2 for a Public Hearing on June 7, 2005. The Planning Board agreed with the dates.

Mr. Urbanneck asked if CES would like to continue with their presentation. Mr. Crafts answered, "Yes if the Board so wishes."

Mr. Collier stated, "Now we are having a workshop session." The Planning Board agreed.

Mr. Crafts said that they have been at this for 90-120 days. He stated that, "CES first came to the Town February 1, 2005 with the application for a residential pier, and before that on January 26, 2005 they went to the Harbor Committee, which did not have a quorum. CES also received a permit by rule from DEP, a copy of which, the town has on file. On February 2, 2005 the Harbor Committee approved the pier application and CES has a letter from the Harbor Master approving the pier. At the February 14, 2005 Selectman's Meeting the Selectmen had an issue about the 1860 deed and if it had any impact on potential Town pier site. Mr. Crafts said they have irrefutable evidence and the Planning Board had indicated that it was no longer an issue. At the February 8, 2005 meeting things were missing from the application the names of abutters, the length of the pier and a revised lighting plan. That information has been provided. On February 22, 2005 the Planning Board reviewed the archeological data and requested more. The Planning Board asked for the State Historical Commission findings & to have their fingerprint on the project, CES has done that. On March 15, 2005 CES asked for a site walk with Town Officials, members of the public and applicant, it happened on March 26, 2005. The Army Corp of Engineers authorized the pier and they have granted the permit. This is where we are, everything asked for has been provided and what we are left with is the approval by the Town of the pier and that's where we feel we are."

Peter Butler said, "How about the seals, forty-two years I've lived on Seal Cove. There's seals on that harbor if you people are going to put a pier in there you're going to drive the seals out. The seals lived on that beach since I was a little kid. My family lived on that beach ever since I was a little kid. This is a bunch of Bullshit."

Chairman Urbanneck asked, "Excuse me sir, can you identify yourself for the record?"

"My name is Peter Butler taxpayer and resident Seal Cove. I'm speaking for a lot of people in the Town of Seal Cove. We don't want this pier."

Chairman Urbanneck reminded everyone that this is a workshop session, questions only, at workshops we don't want to get into particulars.

Mr. Libhart asked, "Can we have an admonition on the use of language? This Town is getting a bad reputation from language used by Selectmen and people at Town Meeting. Why can't we be civil, Peter?"

Chairman Urbanneck asked, "If everyone could temper profanity. Any questions to the applicant?"

Reva Weisenberg stated "The scale of this in a private family boggles my mind. Is there anyway that anybody can tell me that I can be comfortable with this being built?"

Jeff Crafts responded, "I know this is an emotional issue for many in the audience and I understand where everyone is coming from, I don't necessarily agree with them, we have taken the pier only as far as necessary for the use intended, it is the appropriate size for use. We have specific charts and diagrams here tonight for the family."

Will Stroud asked, "Who owns the ledge, isn't there a ledge?"

Mr. Crafts stated, "The pier will not be built on Reeds Ledge".

Maynard Young asked, how big is the footage, how deep, how big a boat are we talking about. When these questions were answered he then asked, "Is that the only boat? Is it like a community pier? How residential is this? Sounds like a lot of traffic coming through."

Mr. Crafts said "In my opinion this is a residential application. I can't judge through your eyes how you view it. Mr. Singh owns southern end of Tinkers Island with one resident on Tinkers Island. During site visit Mr. Singh explained probable use of this property as a small family residence".

Mr. Libhart said, "That's your problem; these people are here because they are concerned. Can you guarantee that 28 condominiums won't be built? Probably is not going to do it, are there restrictions in the deed? These peoples concerns are 28 houses, 28 moorings. I should be upset about impacted area more than anyone and I can't get an answer out of this guy." Mr. Libhart also said he is "Not opposed to it if you level with us, if you don't I might change my mind."

Linda Higgins asked "28 condos, wouldn't that kind of building have to come back before the board?"

Mr. Urbanneck mentioned again that this is just workshop. "Concerns and questions should be brought up in the future at Public Hearing".

Mr. Libhart stated, "If they would just level with us."

Carroll Butler asked, "Will there be any activity other than lobster fishing, that wouldn't be good?"

Mr. Weisenberg stated that residential use is very wide open and he is not comforted by referring to this as residential use. Mr. Weisenberg stated he, "would like to know

if Mr. Singh is prepared to contract with town for 5 or 10 yrs stating that he will not develop more than 14 single family residences.”

Mr. Crafts said, “As a repeat of site visit Mr. Singh showed everyone there the plan that showed 14 single family residences on that property. Mr. Singh said that his intention is for that beautiful property to be saved for the family. He never talked in any larger numbers.”

Diane Miller asked if the pier will be on beach or on the ledge.

Mr. Crafts answered that it will touch down once in cobble.

Mrs. Miller asked “what is cobble?” Mr. Johnson showed a map of the location of the pier. Mrs. Miller asked if on the sand beach any pilings would be placed.

Mr. Crafts said its cobble beach, which he thinks of as bigger rocks.

Mrs. Miller asked “can we walk under it?”

Mr. Crafts answered, “Yes, you can walk right under this thing; it will look just like the one on Tinkers, typical pier construction.”

Andy Harris from Seal Cove stated, “Steel construction is heavy duty for a residential pier.” Mr. Johnson explained why it is necessary.

Mr. Urbanneck asked if there were any other questions. Mr. Urbanneck said that the Planning Board spoke to council in Executive Session about additional information and clarification in the definition of Section F, Limited Residential Shoreland, Land Use Standard. He further explained an issue rose given condition of structures and the Tremont Ordinance states that a pier is an accessory use to a residence. He stated the Board would need to continue investigating.”

Mike Ross said that Mr. Egbert will be renovating the existing structure to use this summer.

Mr. Urbanneck noted that the building currently is not livable.

Mike Ross said that the Ordinance doesn’t say livable residence, it says residence. Mr. Urbanneck said that he would be hard-pressed to make that determination.

Mr. Ross said that the Ordinance does not say current family residence.

Mr. Urbanneck “do we know Millard?”

CEO responded that “the building is assessed but not sure what it is assessed at.”

Mr. Urbanneck said that Mr. Ross has a valid point. He asked, “Board members do we need to ask Mr. Collier to investigate this issue?”

MOTION: Linda Graham made a motion that the Board give this to James Collier to go ahead and explore this issue on residential status of this property, Mike Ryan seconded. Motion passed by a show of hands 4-0. Mike Ryan would also like to add that “what we have to do as the Planning Board is go by the Ordinance, period.”

Mr. Urbanneck would like to reinforce that we don’t have subjective opinions, the Planning Board is a Quasi Judicial Board, and decisions are made and are held in accordance with our Ordinance and the State Ordinances. He would now like to continue scheduling of Public Hearing. Mr. Collier mentioned to Mr. Ross and Mr. Chapman that any assistance they could provide would be very helpful. Mr.

Urbanneck said that perhaps by the May 31, 2005, in 2 weeks, that Mr. Collier could have the information. Mr. Collier said that would be no problem.

MOTION: Linda Graham made a motion that the Public Hearing will be on the 31st of May at 6PM. The CEO asked if this is going to be a workshop or a Public Hearing, do I need to mail out abutter notices? Mr. Urbanneck said it would be a workshop and an open discussion, attorneys and public are welcome. It was discussed and all interested parties reached a consensus that the Public Hearing would be on June 7, 2005 at 6PM. Mr. Libhart expressed concern that the Planning Board Meetings scheduled aren't regularly scheduled meetings. Mike Ryan said, "We are going to have a regularly scheduled meeting on May 31, 2005." Mr. Urbanneck explained that regular scheduled meetings are on the second & fourth Tuesday of every month. The CEO asked Mr. Chapman, the attorney for concerned parties, if this meeting, May 11, 2005, would constitute being notified. Mr. Chapman answered "yes." Mr. Urbanneck asked the CEO if one notice next week for the meeting on May 31 would be all right. CEO answered "yes." Mr. Collier stated, "The Ordinance says scheduled, not regular scheduled, abutters don't need notice because no decision will be made." Mike Ryan said he wanted to ask Mr. Chapman if he considers this notice for May 31, 2005 meeting. Mr. Chapman responded "most certainly." Mr. Collier asked that since the other attorneys are helping him could they look at the case of Union vs. Strong. Mr. Chapman asked, "Does the Planning Board realize that they have no control over condominiums and Planning Development." Mr. Urbanneck said that they know the State Ordinance governs that and planning development. Mr. Urbanneck also said that it would still need to be approved by us and follow our Ordinance.

8. CEO ISSUES

None

9. NOTICES

None

10. OTHER

None

11. SET DATE FOR NEXT MEETING

Tuesday, May 31, 2005 at 6:00PM.

12. ADJOURN

MOTION Linda Graham made a motion to adjourn Planning Board meeting of May 17, 2005 at 7:45PM, Jim Keene seconded. Motion passed with a show of hands 4-0.

Respectfully submitted,

Millard Billings
Town Manager

These minutes have been completed by Town Manager Millard Billings, due to illness of the Recording Secretary, using draft minutes and written notes by Heidi Farley and referencing the digital recording of the meeting.

Chairman George Urbanneck