

**REGULAR PLANNING BOARD MEETING
TREMONT COMMUNITY BUILDING
TUESDAY, MAY 31, 2005
6:00 PM**

1. CALL TO ORDER

Chairman George Urbanneck called the Planning Board meeting of Tuesday, May 31, 2005 to order at 6:05PM.

2. ROLL CALL

Chairman George Urbanneck, Board members James Keene, Linda Graham, Mike Ryan, CEO Millard Billings, Recording Secretary Heidi Farley and Town Council James Collier.
Members of the public in attendance were

3. ADJUSTMENTS / ADOPTION OF AGENDA

None

4. APPROVAL OF MINUTES

- A. Minutes of May 17, 2005 Planning Board Meeting
None Available

5. SUBDIVISIONS

- A. Workshop – David Herrick, Map 5 Lot 28, Residential Business Zones, Application is for a subdivision involving a cluster development of 19 houses.

Chairman Urbanneck asked if a preliminary plan was available. Mr. Herrick said yes and put the plan on the easel for everyone to see. Doug Morrill from STC Engineering explained the Subdivision Plans of Mr. Herrick. He stated they are working on resolving the boundary lines. He explained that Mr. Herrick has approximately 45-48 acres. He explained that Mr. Herrick is leaning towards cluster development, and possibly develop the northerly side of the property and the opposite (western) side. He explained that the middle is all wetlands which would be dedicated as open space and could never be built on. Jim Keene asked “Which road will it be coming off and how long will the road be?” Mr. Morrill explained that it would be coming off Ledges Road and be approximately 700 feet long. Chairman Urbanneck told Mr. Herrick and Mr. Morrill that the Town has never had a cluster development before and asked if anyone had any questions for them tonight. He also noted that the Ordinance envisions it but it hasn’t been done yet in Tremont, it allows you to reduce lot size to 20,000 square feet, have dedicated property that can’t be built on and he stated he is glad they are considering this. Mr. Morrill explained that this project would be done in phases over a period of years, possibly a five to ten year plan. He said they just wanted to get this out in the public and let everyone know what is going on. Amy Farley was concerned about the amount of traffic this project would bring in. Chairman Urbanneck said that the Planning Board would certainly look at roads and requirements to funnel traffic safely, the travel way looks too narrow but yes it is an issue. Jim Keene said that he would like to see the whole package. Mr. Morrill explained that they just wanted to get some facts out on the table. Mr. Keene then said “Prior to residents moving in there will be a lot of trucks; it may not be as busy after the development.” Chairman Urbanneck asked if there was any standing water. Mr. Morrill said that yes there was. Mr. Urbanneck then thanked Mr. Morrill and Mr. Herrick for coming.

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.

Mr. Jewett explained that the private walkway and float are totally removable and will be pinned on the ledge that is there. He has presented the proposed plan to the Harbor Committee. The Harbor Committee approved the application provide that he show the riparian lines. Mr. Jewett gave the Planning Board a letter that says that no NRPA permit is required. The float will bottom out at low tide. Mr. Urbanneck asked if the Board had any questions or comments. Jim Keene asked what the dimensions of the float were. Mr. Jewett said 10 feet by 12 feet long and the walkway is 3 feet 6 inches by 40 feet long. Chairman Urbanneck asked, "How far from the shore does it end?" Mr. Jewett said "about 50 feet there is a 2 foot overlap." Mr. Keene asked if there were any electric lights and if there was any form of walkway?" Mr. Jewett said no to both. Mr. Jewett also said that he did not need a permit from the Army Corp of Engineers because the project is under 500 feet. Chairman Urbanneck went over the standards of use, and asked if there was any fishing in that area. Mr. Jewett said, "No," and reported that the Harbor Committee also said there was no fishing in that area. Chairman Urbanneck then asked if Mr. Jewett knew of any floats similar. Mr. Jewett responded that he couldn't think of any. Chairman Urbanneck pointed out that it is for high tide use only and noted there is a home which is the principal use of the property. Chairman Urbanneck then asked if the Board members had any negative thoughts or feelings about this. The Board agreed that they don't foresee any adverse problems.

MOTION: Mike Ryan made a motion to accept application for pier for William J. Baker. Chairman Urbanneck asked if Mr. Jewett had a letter of authorization from Mr. Baker. Mr. Jewett stated he thought it was in information he had submitted to the Planning Board. Mr. Jewett said he could bring it back. Mike Ryan then made a motion to approve the application for William J. Baker submitted April 30, 2005 for a private walkway and float contingent upon Mr. Jewett providing Millard Billings with a letter stating he {Mr. Jewett} has authorization to act on Mr. Bakers behalf. Linda Graham 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.

Chairman Urbanneck went through the decision tree. Mr. Jewett fixed and initialed the following typos.

1. Uncheck "other permits needed"
2. Page two, changed from residential to "water use dependant"
3. Change dimensions from 3 feet to 3 feet 6 inches in two places on the application.

Chairman Urbanneck asked if anyone had any other concerns or comments. There were none.

MOTION by Mike Ryan with a second by James Keene to approve the Flood Hazard Development Permit by William J. Baker, as represented by Michial Jewett, dated May

1, 2005 contingent on Mr. Jewett providing Millard with a letter of authorization stating he has authority to act on Mr. Baker's behalf. Motion passed by a show of hands 4-0.

- C. David Elliott – Harbor Shoreland & Residential Zones - Map 4 Lot 6-1, to cut and remove dead and diseased trees infected by Adlegid Aphid within 250 feet of the normal high water line in the Shoreland Zone.

Dave Warren from Atlantic Land Services Group, Inc. representing David L. Elliott spoke to the Planning Board about the Adlegid Aphid also known as the Balsam Fir Woolly Worm Infestation. He said that it spreads by warm winters. Mr. Warren said that 100% of the old grove stands on Mr. Elliott's property are dead and none of the wood is saleable. Chairman Urbanneck asked, "How much needs to be taken down?" Mr. Warren said, "About an acre." He said that the area has been ribboned off, the cutting won't be visible; the area is badly infected and is a fire hazard. Chairman Urbanneck questioned what zone the property is in; if in Resource Protection Zone he would need a soil erosion sediment control plan as required by Maine Forestry. The CEO said that, "The area is in the Harbor Shoreland Zone". Chairman Urbanneck said, "So never mind, we don't need it." Mr. Warren then told the Board, "The chips will prevent soil movement. The area to be cut is delineated." The CEO asked, "What time of year are you going to do this?" Mr. Warren answered, "I think, right now."

MOTION: Mike Ryan made a motion to approve the application for cutting out the deadwood, caused by the Balsam Fir Woolly Worm infestation, dated May 23, 2005 for David Elliott, as represented by David Warren. Linda Graham seconded. Motion passed by a show of hands 4-0.

- D. Louise Kinney – Commercial Fisheries Zone – Map 13 Lot 15, to add a second story for larger bedroom and office space as well as an entry from new driveway with split stairs to access both levels, cement retaining wall 40 inches high to keep driveway from house.

Louise Kinney spoke to the Planning Board about growing up here, how she came back here to live and her proposed addition. Chairman George Urbanneck, asked "Strictly residential use, not fisheries, just raising second floor". Ms. Kinney replied, "Yes and stairs to get up there." Jim Keene asked if it was the building on the right end of Western Way. Ms. Kinney answered "Yes it is. She inherited it in 1996." Chairman Urbanneck said, "Standards are for Commercial Fisheries, all Maritime Commercial Activities, Non maritime limited commercial use, all maritime dependant industry and marina activity use up to 2000 sq ft. One residential unit is permitted as accessory use to permanent use. There is a dilemma; it is a non conforming structure on a non conforming lot with a non conforming use. There is less than a 75 feet setback; its only setback 48 feet". Ms. Kinney said that it crisscrosses the corner. Chairman Urbanneck said, "But still, just 48 feet. Non conforming structure can be expanded provided not more non conforming, Section C 1 in the Ordinance legally existing more than 25 feet away" He also said the height of the proposed addition is a problem and the setbacks from the high-water mark are supposed to be 75 feet not 48 feet. The total combined floor area 1000 feet, height 20 feet, with expansion it would be 24 feet. The proposed expansion would make the floor area 1034 sq ft. Ms. Kinney said that includes the shed. Mr. Urbanneck said that Ms. Kinney doesn't have to include 80 sq ft garage, now 954 sq ft but there is still a problem with 24 foot height as only 20 feet is allowed. Chairman Urbanneck said, "To continue on let's look at everything". Chairman Urbanneck then asked if anyone had any other comments. Mr. Steve Lyman who is representing Dr. & Mrs. Stagg asked if the proposed stairway was included in the structure. Chairman Urbanneck answered yes and

that would be a problem too, it would make it more non-conforming, you can't put an additional structure, being the stairs, within the 75 foot setback requirements that are already non-conforming. Ms. Kinney then asked about the house next door. Chairman Urbanneck said that he was not sure about it but it was probably grandfathered like hers. Ms. Kinney then asked about the sunroom on the adjacent property, similar condition on a neighbor's property. Mike Ryan said that it is irrelevant to them. Chairman Urbanneck then said "We are not going into details about another house; we have to look at yours." The CEO said that the house Ms. Kinney is talking about was approved by the Planning Board. Chairman Urbanneck said "I still don't know about that. The stairs are not within the 75 foot setback requirements so they wouldn't be allowed. May not increase the volume or area of use by more than 30% in Section VIII, C-1-a, which is 1000 sq ft and not allowed more than 20 feet height. Non conforming use doesn't appear to be a problem. Non conforming lots reflects back to non conforming structure and 20 foot height. You could take it to the Board of Appeals if it is worth your time. What applies is D-1-b refers to C-1-a which refers back to non conforming height." Ken Olsen who stated that he is a full-time resident and Ms. Kinney's neighbor on the east side, appreciated Ms. Kinney coming to him about what her plans were. He is concerned about height as well and brought photos of views from his living room; he has clear view over Ms. Kinney's house to Bass Harbor and was hoping her plan would have had her expand back. He stated, "I am not here to cause problems for Louise. Her project would take value out of my home; if she could find a way to expand without affecting the value of my home it would be greatly appreciated." Mr. Lyman asked if in this zone if lot coverage requirements include a driveway. Chairman Urbanneck replied that the driveway is a non vegetated surface, just for lot coverage not for structure. The CEO said that a driveway might be considered if paved but not a non vegetative as in this case. Chairman Urbanneck told Ms. Kinney that if she could revise her plan to be not more non conforming with a single floor out the back and being careful of setbacks from neighbors she might be able to do something. Ms. Kinney asked how she will know how much square footage. Mr. Urbanneck answered 1000 square feet maximum, if you could put it behind house you'd be ok. That's a possibility but remember to be careful of side property lines, you need 15 feet you have 19 feet on one side. Chairman Urbanneck asked if there were any other comments." There were none.

MOTION: Jim Keene made a motion that Louise Kinney's application dated 5/19/05 to expand her structure on her lot be rejected because it does not meet ordinance standards in Section VII-C-1-a-1)-(c) because her structure would exceed 20' height restriction. Mike Ryan seconded. Motion passed by a show of hands 4-0.

7. OLD BUSINESS

- A. Workshop - Greg Johnston of CES, Inc. representing Robert Egbert, Map 8 Lot 9 regarding the application for construction of a pier on the Cape Road

Chairman Urbanneck said that the item was about the issue residential use of property after last weeks meeting. Now another issue has been brought up. Original Purchase & Sale made out to Mr. Egbert everything Egbert advised by outside source that Pritam Singh and Ann Johnston is property owner so the issue is does Mr. Egbert have standing given that he is not on property deed. Mr. Singh and Anne Johnson are not on the paperwork that has been turned in so far. Mr. Johnson from CES said that they did fax a new deed. Attorney Mike Ross representing Mr. Egbert told the Board that Mr. Egbert originally signed Purchase & Sale agreement then when the time came to acquire the property it was put in Mr. Singh and Ann Johnson's name. Mr. Egbert then leased the property from them. They had to get financing and then conveyed interest to Mr. Egbert and their children. Mr. Singh and Ann Johnston along with their children signed Power of

Attorney to Mr. Egbert and appointed him also as Attorney in fact, so we have continuity. If you refer to case law you will find Right, Title and Interest first & a Contract second. We have a lease that has been determined ownership interest and now have appointed that Mr. Egbert can proceed on behalf of owners. Now have a situation an appointment point that he can proceed on behalf of co owners. Oral lease Chairamn Urbanneck do you have a copy stating when Ross at the time of the lease to Mr. Egbert purchase. They bought the property Egbert also manages other property for family as well as others Mr. Urbanneck problem, dilemma is until outside party advised us that Mr. Egbert was not the property owner or proposed owner, everything has been in Mr. Egbert's name since November of last year when Purchase & Sale was signed by Mr. Egbert and bank of New York and April 19, 2005 when the deed was signed by Mr. Singh and Ann Johnston, we had an understanding that Mr. Egbert was the owner. Mr. Ross said that Mr. Egbert simply assigned the Purchase & Sale over to Mr. Singh and Ann Johnston. This Board was under the impression that Mr. Egbert had standing and was they were then able to secure mortgage, Rob Egbert continued to lease property. Mr. Urbanneck was a document presented to Planning Board stating that that is indeed what happened lack of information gap all of a sudden Ann Johnston and Pritam Singh are the property owners, do you understand my dilemma here?" Mike Ross answered "no I don't see that Mr. Egbert's position has changed, he has to Right Title & Interest has changed well I do we don't p s assigned to Mr. Singh and Ann Johnston, they then secured the mortgage to purchase the property and then Mr. Egbert leased the property from them. Mr. Urbanneck asked "is there a document stating this information, there is a gap from November of 2004 through April 19, 2005." Mr. Ross said that he doesn't see that Right Title and Interest has changed. Chairman Urbanneck stated that he does the Planning Board hasn't received anything for Mr. Singh and Ann Johnston they are the owners. Mr. Urbanneck said that Mr. Egbert was the buyer and he had standing. This Board was not advised that Mr. Egbert was no longer the applicant; in Mr. Urbanneck's eye he no longer has standing with this application. Mr. Ross said that Mr. Egbert has ownership and interest. Mr. Urbanneck said at some point the decision was made for Pritam Singh and Ann Johnston to purchase this property and this Board was never notified , Mr. Collier does this make sense to you?" Mr. Collier said that he does not agree with Mr. Ross because of a 1974 case in Brewer where Mr. Libhart was attorney; they mention what it means to be involved in property and to have standing. Court was only hadn't seen a deed yet in the Ross letter he wrote May 25 to Collier second paragraph, is and has been a public record for some time (see attached) this deed here first seen of this deed. Needs to look at assignments and the deed quoted York vs. Town of Ogunquit crucial point when a decision is made you can rely on oral lease or you can't Brewer case gives discretion and the oral lease is not a reason to turn down application at hearing need Right, Title & Interest. Mike Ryan asked Mr. Collier, "Could you say specifically what documents you want to study?" Not at a crucial point in the decision making Mr. Collier said the Purchase and Sale agreement, contracts and assignment. Chairman Urbanneck asked if it hinged on us believing oral contract. Mike Ryan said we have sales agreement we have deed document do we have enough documents, not asking you to pass judgment on deed from previous owner to Egbert if it meets requirements if pass on deed Mr. Collier yes it is. Mr. Ross Purchase and Sale and assignment. Mr. Chapman searched for a record of the deed at the registry of deeds and saw no assignment Mr. Ross said that the deed is dated May 26, 2005. Chapman stated that as of May 28 not in registry. Jim Keene clear Mr. Singh prime interest in property all along.

8. CEO ISSUES

None

9. NOTICES

None

10. OTHER

None

11. SET DATE FOR NEXT MEETING

Tuesday June 7, 2005

12. ADJOURN

MOTION: Linda Graham made a motion to adjourn meeting at 8:25PM, Mike Ryan seconded. Motion passed by a show of hands 4-0.