

MINUTES
BOOTHBAY HARBOR
SELECTMEN'S MEETING
FEBRUARY 25, 2019

In addition to these typed minutes, video recordings of all Selectmen's meetings are available to be viewed at BRCTV and audio recordings are available to be listened to at the Boothbay Harbor Town Office.

ATTENDING: Denise Griffin, Vice Chair
Russ Hoffman
Mike Tomko
Trisha Warren
Wendy Wolf, Chair

Tom Woodin, Town Manager
Julia Latter, Finance Officer

Chair Wolf called the Board of Selectmen's meeting to order at 7:00 pm.

Pledge of Allegiance: The Board of Selectmen and members of the audience.

TOWN MANAGER'S ANNOUNCEMENTS:

1. Nomination papers for available town positions are due to the town clerk at town hall by 4:30 pm on Monday, March 4th.
2. Barney Baker Associates will be at the meeting on March 25th to give an update on the work they have done on the Fish Pier improvements as well as the repairs to the footbridge. Barney Baker Associates also hope to refine the final design for the footbridge that will be built in 2020/21.

FINANCIALS:

Finance Officer Latter reviewed the financial totals with the Board.

MINUTES:

Selectman Tomko **motioned** to approve the February 11th minutes. Selectman Warren **seconded**. **Unanimous approval.**

SELECTMEN REPORTS:

1. Selectman Warren stated that her personal telephone number had been circulated for town affairs without her consent which was unethical and direct violation of her privacy.

Selectman Warren requested that anyone who would like to contact her, should do so by email through the town website.

LICENSES:

1. Vice Chair Griffin **motioned** to approve the application for a Liquor license **renewal** from Cap'n Fish's Cruises. Selectman Tomko **seconded**. **Unanimous approval.**
2. Vice Chair Griffin **motioned** to approve the application for a Liquor license **renewal** from the Tugboat Inn. Selectman Hoffman **seconded**. **Unanimous approval.**

NEW BUSINESS:

- a. Chair Wolf stated there had been a Wharves and Weirs on-site hearing at 4:00 p.m. that afternoon attended by Selectman Tomko, Vice Chair Griffin, Chair Wolf, Acting Harbor Master, Nick Upham, Joe LeBlanc and several members of the Port Committee. The application is from Mainelen LLC, represented by LeBlanc Associates, Inc. The applicant is **proposing to rebuild/repair the 16' x 155' pier, plus the 20' x 20' dog leg pier section at the south end of the pier and the 37' - 41' +/- section at the beginning (north end) of the pier; and the 15' x 20' building at the south end of the pier (located on the dog leg). In addition, the following new changes are proposed: a 10' x 72' continuation of the east float string paralleling the pier; 3 each - 8' x 40' finger floats; east 36' (long) gangway widened from 3' x 6'; West (south) 30' (long) gangway widened from 3' to 6'; new 10 x 100' and 10' x 92' float strings at the end of the pier; a 6' x 50' gangway at the end of the pier, in the waters of Boothbay Harbor, Maine.**

Joe LeBlanc described the proposal to the Select Board stating the only change from what had been presented at the site hearing was the decision to move the outer float stream 10' to the west of the channel, a concern that had been raised at that time.

Eric Graves, President of the Boothbay Harbor Shipyard, stated they have been able to hire about ten new employees over the past year and are trying to make it work for the community as well.

The Board of Selectmen used the following review criteria to base their judgment upon, along with discoveries made during the on-site hearing and testimony from abutters and/or affected parties:

1. Does the proposed application interfere with or cause an obstruction to navigation?
The consensus of the Board (and Acting Harbor Master, Nick Upham) was that it did not.
2. Does the proposed application cause injury to the rights of others?
The consensus of the Board was that it did not.

3. Has the applicant included all necessary approvals from other agencies such as the Maine State Department of Environmental Protection, the Army Corp of Engineers and the State of Maine Bureau of Parks and Lands?

The consensus of the Board was that it has.

Selectman Hoffman was concerned about a letter from an abutter that claimed the mass would interfere with navigation.

Acting Harbor Master Nick Upham asserted that it would not. Upham also noted that none of the floats will be in the cove.

The application was approved with two conditions.

1. That the outer float stream be moved 10' to the west of the navigational channel.
2. To assist with safety concerns, radar reflectors should be added at the end of the float streams by Mainelen and the shipyard should add light reflectors as well as low-lighting at the end of float streams plus on any boats berthed at the end of the float stream.

Selectman Tomko **motioned** to add these conditions. Selectman Warren **seconded**. **Unanimous approval.**

Chair Wolf **motioned** to approve the application. Vice Chair Griffin **seconded**. **Unanimous approval.**

b. Chair Wolf stated the next item under New Business was discussion and approval of the warrant for the annual town meeting. After thanking all who contributed to the process Chair Wolf stated the Select Board had drafted two versions of the draft for the warrant and asked Attorney Cunningham to explain them to the public. The two versions are as follows.

Revised 2.25.2019

Draft Warrant Article Wording—Version 1

Article 1 To see if the Town will vote to amend the Land Use Ordinance Chapter 170 including the revised Zoning Map and the Land Use Table as set forth in the document titled “Chapter 170 Land Use Amendments” adopted by the Board of Selectmen on February 25, 2019, to convert the existing Maritime/Water Dependent District into two maritime districts: A Limited Commercial/Maritime District and a Working Waterfront District.

The Limited Commercial/Maritime District would allow limited commercial uses (e.g. motels, hotels, inns, microbreweries and marinas) consistent with a mixed-use district favoring traditional water-dependent uses.

The Working Waterfront District would prohibit motels, hotels, inns, microbreweries, yacht clubs, and other uses not consistent with a working waterfront district.

The maximum height of a building in the Limited Commercial/Maritime District and in the Working Waterfront District would be the same as is now provided for the General Business District (35 feet or 2½ stories, whichever is less).

Article 2 To see if the Town will vote to amend the Land Use Ordinance Chapter 170-101.12 to change the definition of the “Height of a Structure” so that the method of measuring the height is the same as in the State statute applying to shoreland zoning ordinances, Title 38 M.R.S., Section 436-A(7-A). The Department of Environmental Protection has requested the Town to make this amendment so as to be in compliance with the DEP’s minimum requirements for shoreland zoning ordinances as set forth in said statute.

Article 3 To see if the Town will vote to amend Land Use Ordinance Chapters 170-101.12 and 170-113 to clarify the definition of Functionally Water-Dependent Uses by putting parentheses around the phrase “excluding recreational boat storage buildings” so that this exclusion applies only to recreational boat storage buildings. This amendment would correct a punctuation error but would not change the intended meaning of the definition.

Revised 2.25.2019 **Draft Warrant Article Wording—Version 2**

Article 1 To see if the Town will vote to amend the Land Use Ordinance Chapter 170 including the revised Zoning Map and the Land Use Table as set forth in the document titled “Chapter 170 Land Use Amendments” adopted by the Board of Selectmen on February 25, 2019, to convert the existing Maritime/Water Dependent District into two maritime districts: A Limited Commercial/Maritime District and a Working Waterfront District.

The Limited Commercial/Maritime District would allow limited commercial uses (e.g. motels, hotels, inns, microbreweries and marinas) consistent with a mixed-use district favoring traditional water-dependent uses.

The Working Waterfront District would prohibit motels, hotels, inns, microbreweries, yacht clubs, and other uses not consistent with a working waterfront district.

Article 2 To see if the Town will vote to amend Land Use Ordinance Chapter 170-41 to make the maximum height of a building in the Limited Commercial/Maritime District and in the Working Waterfront District the same as is now provided for the General Business District (35 feet or 2½ stories, whichever is less). If adopted, this Article shall take effect only if Article 1 above is also adopted.

Article 3 To see if the Town will vote to amend the Land Use Ordinance Chapter 170-101.12 to change the definition of the “Height of a Structure” so that the method of measuring the height is the same as in the State statute applying to shoreland zoning ordinances, Title 38 M.R.S., Section 436-A(7-A). The Department of Environmental Protection has requested the Town to make this amendment so as to be in compliance with the DEP’s minimum requirements for shoreland zoning ordinances as set forth in said statute.

Article 4 To see if the Town will vote to amend Land Use Ordinance Chapters 170-101.12 and 170-113 to clarify the definition of Functionally Water-Dependent Uses by putting parentheses around the phrase “excluding recreational boat storage buildings” so that this exclusion applies only to recreational boat storage buildings. This amendment would correct a punctuation error but would not change the intended meaning of the definition.

Attorney Cunningham pointed out how Version 2 does not hold together as it should which makes Version 1 the better selection. Attorney Cunningham also explained that the warrant articles ask if the voters approve or disapprove of the proposed article rather than listing all the sections of the proposed amendments to the land use code which will be available to review in advance.

Chair Wolf opened the floor for Public Comment.

1. Lynne Seitzer felt there had been enough debate over building heights and that they do not have to be lumped together with the two-district zone proposal.
2. Mike McBride stated the building height had been separated out because it would apply to the whole town. Having a 30' building restriction on the east side with a 20' corridor requirement would not be viewed as feasible to any developer.
3. Susan Craig stated the comp plan advises reduced building heights in the marine district on the east side. Craig also stated the (present) ordinance says when the state is in conflict with a town ordinance, the stricter ordinance prevails.
4. Bill Logan stated view corridors on the east side is a significant change so view corridors were a compensating measure.
5. John Seitzer stated it was too late for Oceanside to have a view corridor so it would only apply to the former Lobster Dock property
6. George Craig felt it did not make sense to separate the vote into two parts.
7. Patty Minerich thought the building height should be keep together with the two-district zone vote.
8. Bob McKay thought an architect could design a building in tiers as it approaches Atlantic Avenue so it will end up being 35' on either end (to get around the height restriction).
9. Darrell Gudroe wondered why the view corridor couldn't be included with the height article.
10. Bill Hamblen, Planning Board Chair, stated he could not speak on behalf of the Planning Board but believed they would choose version one. Hamblen stated that it bothered him to perceive the discussion was being opened again to see if there was another way to please everyone. Hamblen urged the Select Board to follow their decision, stating that the Planning Board's job is to recommend zoning change and the Select Board's to formulate warrants.
11. Ken Fitch stated view corridors are red herrings because the subject is very sensitive to some people so the building height and the proposed two-district zone should be voted on separately.
12. Tom Minerich stated he completely disagreed; that taking away 20' from building space for view corridors mandated increasing the building height.
13. Michelle Angelico felt measuring from the downward slope is a more restrictive way to measure building height.
14. Jean McKay wondered why 30' wasn't good enough.

15. Bill Logan stated Melissa Neel had a site plan of the Lobster Dock property prepared by the Knickerbocker Group that showed a building that begins as 30' and is only 21' on the Atlantic Avenue end due to the slope of the land. [Only Selectman Hoffman asked for a copy.]
16. Bill Hamblen stated he felt it was the responsibility of the Select Board to get what the Planning Board had voted unanimously for to the town for a vote, which was a building height of 35' town-wide. "For the Select Board to not carry this forward would be to throw away the 15 months of workshops and meetings that the Planning Board has spent to finalize a recommendation. Having a town-wide building height in the Shoreland zone makes sense and the Planning Board would not recommend it if it did not, so urged the Select Board to put it back on the warrant as a separate article and let the town vote on it. By not doing this undermines the motivation of the Planning Board. You owe it to the town to let them vote on what has been recommended."

Chair Wolf stated there are two options of the Draft Warrant Article Wording: Version 1 that includes the 35' or 2 1/2 stories height restriction in the two-district zone and Version 2 that breaks the height out as a separate article which would apply town-wide.

Bill Hamblen clarified that the Planning Board recommendation is Version 1 with the building height included in the two-district zone plus a separate article for a 35' building height town-wide.

Chair Wolf recalled during the workshop she had been proposed adopting the town-wide standard of 35' or 2 1/2 stories building height as per the recommendation of the Planning Board and **motioned** to reinstate that in article two in Version 2. Selectman Hoffman **seconded**.

Vice Chair Griffin didn't understand why there should be two different ways to measure building height, in the Shoreland zone and the rest of the town so would refer it back to the Planning Board.

Selectman Hoffman stated as he understands that is what the DEP advises.

Motion failed 3 - 2. (Selectman Tomko, Vice Chair Griffin and Selectman Warren were opposed.)

Chair Wolf stated they would turn their attention to Version 1 and 2 as written. Upon hearing no comments or recommendations from the board members, Chair Wolf **motioned** they adopt Version 1 as the draft warrant. Selectman Hoffman **seconded**. **Motion passed 4 to 1.** (Selectman Tomko was opposed.)

Chair Wolf stated the other item they must take care of is to approve the **actual zoning amendments** being proposed to Chapter 170 Land Use Codes for the warrant question. Vice Chair Griffin **motioned** to approve. Selectmen Warren **seconded**.

2/25/19

Attorney Cunningham clarified that the Select Board was voting to approve the **statement** of the proposal going to the voters.

The vote was a **unanimous approval**.

PUBLIC FORUM:

1. Daniel Perritt expressed concern about the safety of the sidewalk railing in front of the Congregational Church parking lot on Townsend Avenue. Manager Woodin responded that the railing there belongs to the church so he should consult with them.
2. John Seitzer stated he had been defamed by someone getting signatures on a petition accusing him of assaulting a person at a Selectmen's meeting and had contacted Chief Hasch. Chair Wolf stated it is not a Select Board issue but can affirm that the behavior conducted at the Selectmen's meetings is always polite and conducted with propriety, with no public disruption by any attending member who have been a model of civil discourse.

WARRANTS:

Vice Chair Griffin **motioned** to approve the warrants upon careful review. Selectman Hoffman **seconded**. **Unanimous approval**.

EXECUTIVE SESSION:

(None)

MOVE TO ADJOURN:

The meeting was **adjourned** at 9:00 p.m.

KB