

MINUTES
BOOTHBAY HARBOR
SELECTMEN'S MEETING
FEBRUARY 11, 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

Chair Wolf called the Board of Selectmen's meeting to order at 6:00 pm.

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

Chair Wolf stated the **Public Hearing** would be conducted first.

There was a handout prepared by CEO Geoff Smith to help the discussion proceed in an organized manner. It included the wording of the ordinances so they could be taken section by section with public comment. Chair Wolf gave the audience some guidelines to follow when making their comments. Attorney John Cunningham was present to answer questions that needed more detailed legal interpretation. CEO, Geoff Smith and Planning Board Chairman, Bill Hamblen were also present to answer technical questions.

Chair Wolf stated there would be a workshop the following week on Wednesday, February 20th which would be open to the public but public comment would not be taken.

Chair Wolf began with section 170-21 Districts Established concerning the names of the two-district zone: Limited Commercial/Maritime District and Working Waterfront District.

There were no public comments.

Chair Wolf moved on to section 170-22 Zoning Map which contains some technical issues that outline the proposed new zone and also delineates the Purpose of Districts in the Working Waterfront District and the Limited Commercial/Maritime District.

There were no public comments.

In section 170-26 Description of Districts the Limited Commercial/Maritime District is delineated according to the geographic boundaries (between Lots 30 and 32) on Map 10 dated April 1, 2013. It delineates the Working Waterfront District to be Lots 19, 20, 21, 22, 22A and 23 on Map 16 dated April 1, 2013.

No public comments.

The next section, 170-27 Schedule of Uses has three footnotes, two "housekeeping" issues (footnotes 17 and 18) and one which raised questions at the previous meeting (footnote 15), re: new residential uses are limited to upper floor locations above commercial uses and shall be considered a separate use.

There were two public comments.

1. Bill Logan, on behalf of Paul Coulombe, stated the limitations on new residential uses had not received enough prior discussion as Vice Chair Griffin had pointed out at the last meeting. Also, by doing so would cause some pre-existing uses to become non-conforming.

2. Susan Craig stated that according to the comprehensive plan, limiting residences to upper floors is only in the Downtown Business district. Craig gave examples of problems for handicapped people, one-story dwellings and whether basements would be included. [Bill Hamblen, Chair of the Planning Board, stated that the comprehensive plan spoke to the west side when re-written in 2015. However, in the early fall of 2017 the Planning Board had voted unanimously to continue the concept on the east side as well because it was felt that ground floor residences were a significant threat to a vibrant commercial downtown community.]

Next Chair Wolf stated that due to some comments made by Mitchell Rasor on the **Schedule of Uses** they considered making some changes to the original list. The DEP was consulted and the items highlighted in yellow are the updates that have been made since it was last reviewed.

1. John Seitzer stated they should probably not include marinas or yacht clubs under the Working Waterfront. [Chair Wolf responded it was a good suggestion.]

Section 170-28 is a matter of the name change that was already covered.

Chair Wolf moved on to Section 170-41 Height of Building which states unless otherwise specified, the maximum height of a building shall be 35 feet or 2 1/2 stories, whichever is less and is a town-wide proposal. [Bill Hamblen pointed out that the state statute allows for 35 feet in the Shoreland zone.]

There were a number of public comments both in support and in opposition.

1. Robert Rose wondered why the height was increasing. [Bill Hamblen responded that several developers pointed out that a 30 foot restriction is a problem for them to get economic value. It was also discussed as a means to produce more affordable housing by building up.]
2. Donna Piggott was concerned about people on the east side losing their water views.
3. Jean McKay stated when the residents across the street on Atlantic Avenue purchased their properties, the height restriction was 30 feet so she didn't think it would be right for people on the water side of Atlantic Avenue to be able to build as high as 35 feet now.
4. Ken Fitch stated that Maine Preservation had cautioned that there were no measures in place in Boothbay Harbor to preserve historic houses. "It is often cheaper to tear down a building than to retrofit it."
5. John Seitzer expressed concern that buildings five feet taller on the waterfront would affect the view of people on the other side of the street.
6. Susan Craig objected to Bill Hamblen's statement about 35 foot buildings being the state statute which she stated was just the maximum height, and that the building height could be set at any height. Craig stated new construction could also be allowed 30% expansion which would result in a much larger structure. Craig felt building height should differ zone by zone.
7. Tom Minerich stated most of the people speaking were not developers and did not understand that when a house is torn down instead of retrofitted it is usually because there is mold or mildew and it is a hazard to the public. "What people don't realize is that the buildings they are discussing are fairly new buildings with no historic value. Holding a five foot tall canvas as an example is not correct since the 5 foot increase is a percentage of the total height."
8. John Hochstein clarified that there is a misperception about the height being increased from 30 feet to 35 feet because due to the way the DEP requires building heights to be calculated now, some buildings on the east side might end up being less than 30 feet in height.
9. Bill Logan stated the 35 foot building height was a compromise to make the required view corridors more palatable.
10. Jean McKay wondered if Union Street would be under the 35 foot building height limit. [Chair Wolf responded the building height proposal is planned to apply to the whole town.]
11. Julie Roberts reiterated that the 35 foot building height was originally meant to be paired with view corridors.

Chair Wolf stated the next section, 170.82 Nonconforming uses - C, Change of use deals with view corridors.

Bill Hamblen explained the idea of view corridors came up partly because of the comprehensive plan and partly because of the interest of the Planning Board to maintain views of the water. With the 10 foot side yard setbacks, a property with a 100 foot frontage and a 20 foot view corridor would only have 60 feet left for a building. (Less than 20 feet for a view corridor seemed too little and more than 20 feet would not leave enough viable area for a building.)

1. Cindy Watson asked if the view corridors and building height were discussed at the same time because if they were then they should be paired together. [CEO, Geoff Smith stated he did not know if they were discussed at the same time but they were two concepts that worked together, not a compromise.]

2. Donna Piggott stated she had measured Atlantic Avenue which turned out to be exactly 20 feet from white line to white line and wondered how much of a water view that would allow for a view corridor. "It would look more like an alleyway." [Bill Hamblen pointed out that a view corridor might be placed with a side yard setback for 30 feet or two properties might place view corridors together for 40 feet.]

3. John Seitzer stated the former Rocktide Inn does not have side yard setbacks that allow for a water view and suggested buildings also have a width restriction like they do in Portland. [Bill Hamblen reminded everyone that the restrictions apply to new construction only. What is there now is grandfathered and not required to conform to any new restrictions unless the structure is torn down.]

4. Bob McKay stated at the last meeting Attorney Cunningham had said that windows in a restaurant could satisfy the comprehensive plan. [Attorney Cunningham responded it would be wrong to say they do not comply with the comprehensive plan but it could be debated. It will be up to the voters to decide if it does enough. The comp plan is a guide, not a legally binding document.]

5. Bill Logan stated under the new ordinance the area of the Lobster Dock property would be less than half of the total square feet.

6. Robert Rose worried about what would be allowed in the view corridors. [CEO, Geoff Smith stated restrictions had been set on what can be in the view corridors so there wouldn't be unexpected loopholes in the future.]

Chair Wolf moved on the next section 170.82. Nonconforming uses, item number 4.

There were no public comments.

There were also no public comments on the next four sections.

- Section 170-101.A Official Shoreland Zoning Map; Districts and proposed Shoreland zoning map
- Section 170-101.8 Establishment of Districts
- Section 170-101.10 Land use standards: A. Minimum Lot Standards, B. Principal and accessory structures, C. Piers, wharves, bridges and other structures and uses extending over or below the normal high-water line of a water body or within a wetland, G. Parking areas
- Section 170-101.11 Administration

Section 170.101.12 Definitions, Height of a structure

CEO, Geoff Smith explained the height was now determined from the downhill side of the structure where it is to be constructed in the Shoreland zone (according to DEP mandate) in all districts.

There were some public comments.

1. Mark _____ wondered if properties would have to be reassessed if their water view becomes blocked.
2. Tom Minerich was told there is not a "view tax" in town.
3. John Seitzer asked if a crawl space would be included in the height measurement. [CEO, Geoff Smith responded anything exposed above the ground would be measured.] Selectman Tomko clarified that the Shoreland zone encompasses 250' from the mean high water around any body of water.

Section 170-113 Definitions, Half story

1. John Seitzer pointed out there are many buildings around town that are two and a half stories at 30 feet so felt there is no economic value in building up another five feet.

Section 146-5.G (re: changing the names of the districts where cluster signs are allowed)

Section 170 Attachment 7 Table 1 is amended to replace references to Marine/Water Dependent District with Limited Commercial/Maritime and Working Waterfront Districts and references to MW with LC/M and WW

Chair Wolf stated the East Side Zoning Recommendations chart was a summary of what would change if the proposed ordinances are voted in. One comment the Select Board received was about clarification of functionally water dependent uses.

After consulting the DEP and Attorney Cunningham, it was determined that recreational boat storage is not considered to fall within this definition. CEO, Geoff Smith confirmed there is presently no definition of a recreational boat in the ordinances.

Brief General Comments were heard.

1. Ken Fitch wondered how voters who have not been attending the meetings could be educated before they go to vote. [Chair Wolf stated she assumed there would be public education sessions. CEO, Geoff Smith also offered to talk to people if interested.]

2. Jean McKay hoped people would go to the public sessions instead of meeting in private.

3. Steve Lorraine was in favor of a uniform building height in town.

4. Susan Craig asked if someone levels the building on a lot in the Limited Commercial/Maritime District, what the 20% lot coverage means. [CEO, Geoff Smith responded the person developing the lot would come before the Planning Board for site plan review to demonstrate the existing lot coverage calculations were and if the projected lot coverage calculations were and if it does not exceed the previous then the lot coverage would be maintained and not increased. Attorney Cunningham stated the 20% rule applies to everything and in section 170-101.7§3A it says reconstruction or replacement of a non-conforming structure, the non-conformity cannot be increased.]

5. Julie Roberts felt the Planning Board had created a great proposal and that they needed to move ahead.

Bill Hamblen thanked the Planning Board for their part and also the Select Board for refining it.

6. Jean McKay stated for the record she wanted to read a couple of passages from Mitchell Rasor's review which suggested the movement to rezone the east side was more reactive than proactive and that a master harbor plan process aligned with the comp plan would have been a better tactic before engaging with a developer.

The Public Hearing was closed at 7:20 p.m.

The regular Selectmen's meeting resumed at 7:44 p.m.

TOWN MANAGER'S ANNOUNCEMENTS:

Manager Woodin was away.

SELECTMEN REPORTS:

CSD School Charter: Vice Chair Griffin reported that she and Selectman Warren had met with Manager Woodin, Boothbay Manager Bryer, two Boothbay Selectmen, John Bertolet, Steve Lorraine, Richard Hallinan and Bruce McDonald to discuss the school charter. It was agreed that the charter would be modified in three areas as a short term solution.

1. The Board of Trustees would be allowed to raise up to \$140,00 per year for a capital reserve fund (starting with the next school year) with allowances for CPI (Consumer Price Index) or cost of living increase.
2. Any expenditure of \$20,000 or more has to go out to bid.
3. Any bonds \$250,000 or more will have to be voted on by a voter referendum and then sent out to bid from now on.

Selectman Warren added that the 60/40 cost split ratio based on the student number between the two towns (Boothbay/Boothbay Harbor) will remain the same. (When the charter was originally written it was split the opposite way.)

Vice Chair Griffin stated that so far the amendments had only received legal review by Boothbay's attorney. "Hopefully it would pass legislature when brought forth by Representative Holly Stover." Because of a sense of urgency, Vice Chair Griffin asked the Select Board to vote to approve the amendments to the charter pending legal review and approval of their town lawyer.

Chair Wolf stated she was reluctant to vote on the amendment until she and the Board have a chance to read through it.

Selectman Hoffman **motioned** to approve the recommended amendment to the charter as presented. Selectman Warren **seconded**. [The **motion** was **amended** and **seconded** not to set a precedent for voting on items without the required advance notice required. The **motion** was **amended** and **seconded** again to be **conditional** on approval of and without significant changes by their lawyer.] **Motion passed 4 - 1**. (Chair Wolf voted against the motion because of the timeline and the process.)

Chair Wolf invited public comment.

1. Patty Minerich was in favor of approving the amendment due to the crisis at hand.
2. Andy Marvin advised against approving the amendment until the town lawyer has a chance to review it if it was only going to take a few days.

FINANCIALS:

Finance Officer Latter was out sick.

MINUTES:

Vice Chairman Griffin **motioned** to approve the minutes of the January 28th meeting. Selectman Tomko **seconded**. **Unanimous approval.**

LICENSES:

Vice Chair Griffin **motioned** to approve a Liquor license **renewal** for the Russell House Bed & Breakfast with a correction on page four to include items number three and four circled. Selectman Hoffman **seconded**. **Unanimous approval.**

NEW BUSINESS:

1. Selectman Hoffman **motioned** to reappoint Michelle Farnham as the registrar of voters for another two years. Selectman Tomko **seconded**. **Unanimous approval.**

Chair Wolf also thanked the election volunteer monitors from the community who assist her.

2. There has been a request from the Boothbay Region Maritime Foundation to provide a letter of support for a grant application they are submitting to Land for Maine's Future Bond for the working waterfront property (the Sea Pier) they have taken over.

Diane Tibbets stated she hoped they would be considered.

Selectman Tomko **motioned** to approve providing a letter of support. Selectman Hoffman **seconded**. **Unanimous approval.**

ONGOING BUSINESS:

Chair Wolf repeated that there will be a workshop of the Select Board v next Wednesday, February 20th to synthesize the information that has been discussed plus the public comments to try to firm up the proposed ordinances for the east side.

PUBLIC FORUM:

(None)

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 8:08 p.m.

KB