**Minutes**
**Bar Harbor Planning Board Special Meeting**
**Wednesday, October 14, 2016**
**Council Chambers – Municipal Building**
**93 Cottage Street**
**3:00 P.M.**

## I. CALL TO ORDER

*The Chair called the meeting to order at 3:00 PM. Planning Board members present: Tom St. Germain, Vice Chair; John Fitzpatrick, Secretary; Joe Cough, Member and Basil Eleftheriou, Jr., Member.*

*Also present: Robert Osborne, Planning Director; Cornell Knight, Town Manager; Paul Paradis, Town Council, Matt Hochman, Town Council; Peter St. Germain, Town Council.*

## II. ADOPTION OF THE AGENDA

*Mr. Cough moved to adopt the agenda as published. Mr. Eleftheriou, Jr. seconded the motion which was approved unanimously.*

## III. EXCUSED ABSENCES

*None (It was noted that there is now an opening on the Planning Board).*

## IV. REGULAR BUSINESS

**a. Planning Board discussion with officials from Maine Port Authority and Bermello, Ajamil & Partners regarding potential zoning, uses and dimensional standards for 121 Eden Street Ferry Terminal**

*Mr. St. Germain provided an outline of the item and the history of the ferry terminal. He noted that the reuse of the terminal is a stated goal of the 2007 comprehensive plan and that it is a recurring Council Goal year after year. The terminal closed in 2009 and shortly thereafter the Town and MDOT began discussions on how to best take advantage of the facility. The participants in those discussions were the Town, MDOT, MPA, Chamber of Commerce and B&A.*

*Mr. St. Germain indicated that the Planning Board received a request from the Maine Port Authority in March, 2016 to consider a Land Use Ordinance amendment that would add a definition of a new use for the terminal and to add that use to the two zoning districts where the terminal is located. He stated that the Planning Board has also considered the creation of a new shoreland district that might better accommodate the site development proposed.*

*Jon Nass, MDOT and John Henshaw, MPA spoke to the Board about their involvement in the project. He indicated that he was approached by the Town in 2012 to acquire the terminal. He indicated that they approached the owner and have negotiated a lease for purchase. They are now working through a risk assessment. He cautioned that MDOT is careful with tax payer funds and that they seek value on*

*investment. He indicated that Commissioner Bernhardt expressed concern with the current zoning of the property and that the original timeline for the November ballot initiative had not been met. He discussed the relationship with Maine Port Authority noting that they are separate entities but that they are capital partners. He indicated that the intent is for the purchase of the lot but not the capital outlay of $30 million for improvements. That would be done by a third party. The terminal would likely be transferred to Maine Port Authority who would lease the property to the third party investor who would operate the terminal. MDOT is looking for economic development by making the initial investment and taking some corrective actions to make the property more attractive to the investor. Part of this is accomplished by preserving options for investors through regulatory certainty. The regulatory certainty was discussed in some detail. It was noted that the zoning request may not be necessary but it certainly makes a better investment. It was discussed that this could be accomplished with either the existing districts or with a new district. It was discussed that the intent of the new terminal would be that the passenger fees would not go away and that the Town would continue to have that stream of income.*

*Mr. Eleftheriou, Jr. indicated that the Board feels that the redevelopment of the terminal and an appropriate zone amendment is a good idea. He asked what process would be used to vet concerns the town might have about the terminal.*

*Mr. Nass indicated that MDOT has a robust process that was used on the Route 3 project and would envision a similar process used for this issue as well.*

*Mr. Eleftheriou, Jr. asked about potential height needs for the facility.*

*Luis Ajamil indicated that the height needs for cruise ship are not very tall and tend to be moveable gang planks about 11 feet above sea level, a 30 foot plank. There are options of floating and fixed piers and permanent or seasonal.*

*Mr. Henshaw was asked about the uses that he envisions are needed for this to be successful? He indicated that he is open to any use allowed in the zone.*

*Mr. Nass agreed stating that not limiting the uses will get better quality investors.*

*Mr. Henshaw was asked about how local ordinances might address issues? He indicated that the Port Authority would work with the municipality to address and mitigate issues and that in his opinion a municipal ordinance is not needed.*

*Mr. Nass agreed noting that MDOT and MPA would have a contract agreement with the operator of the facility which would have operational language in it.*

*Mr. Cough asked what is the time line? Mr. Nass indicated that it is three years from the signing of the lease to purchase. There is no immediate condition to sign.*

*Mr. Cough asked what if the new guy insists on new terms? Could they supersede zoning?*

*Mr. Nass indicated that the MDOT would not utilize sovereign immunity. He indicated that the path to seeking qualified parties to construct and operate a terminal starts with a request for qualifications and proposals and then runs through a selection process.*

*Mr. Nass stated that MDOT goes above and beyond in order to involve citizens in a vetted process.*

*Mr. Cough indicated that one of his concerns is the alcove and what is to become of it if the ferry were to come back.*

*Mr. Henshaw indicated that there is no particular plan for ferry service to return at this time and the state has no subsidy available to make that happen.*

*Mr. Henshaw also clarified that the existing pier is considered to be unsafe and would need to be torn down. He also indicated that the "alcove" if used for pleasure crafts might be a possible source of revenue.*

*Mr. St. Germain asked if a transportation plan for the terminal had been started? Mr. Nass indicated that would be premature at this time.*

*Mr. Henshaw indicated that a benefit of the ferry terminal location is that it spreads out the passenger points of interest and may alleviate some issues.*

*Mr. Nass indicated that there has been no funds for transit planning yet. He noted that if the Town were to purchase the property that there would be additional local control and that MDOT would be willing to help with that.*

*Mr. Nass noted that the SHIP grants and BIG grants programs are out there.*

*Mr. Eleftheriou, Jr. asked if there is a survey plan available? Mr. Henshaw stated that a new survey should be done and that it could be provided to the Town. Mr. Henshaw stated that there is no specific plan for the reconstruction of the terminal.*

*Mr. Fitzpatrick asked about sovereign immunity? Mr. Nass stated that the state has some authority in this area but they do not wish to do that.*

*It was noted that the Land Use Ordinance generally only has controlling interest to normal high water and that beyond that it is Submerged Lands, Army Corps of Engineers and Maine Department of Environmental Protection and FEMA.*

*Mr. Fitzpatrick asked if the state would commit to complying to the district in perpetuity? Mr. Nass indicated that they are happy to discuss it.*

*Mr. Nass indicated that MDOT does not go into unwelcome towns. They try to work with the Town. They are willing to walk away and are also willing to work with the town to purchase the property.*

*Mr. Henshaw indicated that they could look at assigning the lease to the town. The town is very familiar with the project for over four years. The town sought out MDOT.*

*At this point Vice Chair St. Germain opened the meeting to the public to ask questions.*

*James Collier stated that the Town needs to decide what it wants to be and would like the town to be in control of its zoning. Should be having a discussion about that.*

*Dennis Bercale stated that a clear idea and vision for the town is imperative. How many visitors? Overuse of the Park. Business vs. residential interests. Parking issues.*

*Martha Searchfield indicated that the Chamber of Commerce is a partner in the B&A study. It is regarded as the last best chance. This land will go to a private owner if we do not have this partner.*

*Luis Ajamil answered noise and lighting questions stating that they can either be controlled by ordinance or by contract and management process.*

*Darrin Collins, College of the Atlantic stated that there is a lack of vision and is worried about the impacts to the College. He is concerned about additional visitors. He is not impressed with other cruise ship locations. He questioned possible other owners. Other than cruise ship?*

*Mr. Nass indicated that MDOT is not in business to flip this property to another owner. They seek economic development interests. Looking for cruise ship uses.*

*Dessa Dancy asked about tax exempt considerations and how that reconciles with economic development? Mr. Nass noted that the Town would continue to collect passenger fees.*

*Ms. Dancy asked about tendering to the ferry terminal and when that might begin. Mr. Henshaw noted that the condition of the pier would not allow that to occur until there was a substantial investment in the pier. And he noted that the goal would be to construct a new cruise ship terminal not simply reconstruct what is there now.*

*The topic turned to the cruise ship budget and what the impact to the Town is from those fees. The fees were about $675,000 this year and will be $800,000 next year. It amounts to about 10% of the Town's gross budget. Cornell Knight ran through what the funds pay for: Harbor Master budget; sidewalk improvements of $90,000; Chamber of Commerce $52,000; comfort stations; wayfinding signs and more. All to be made up with property tax if the cruise fees were to go away.*

*It was stated that tendering is consistent with the current zoning language and there was no argument that for over 20 years it has been ongoing based on marina and ferry use language that is contained in the LUO.*

*Art Grief suggested that sovereign immunity is a topic that the Town should seek a legal opinion concerning. He noted that there is the "rule of reason" test. Mr. Grief stated that the Land Use Ordinance can impose rules on piers beyond the water concerning length, size and other factors. He indicated that berthing fees would not be affected moving from municipal pier to ferry terminal. He asked the MDOT position on this?*

*Mr. Nass indicated that the Town would be held whole is the concept. There has been some recent growth of passengers.*

*Luis Ajamil indicated that a range of future trends were discussed in the study from zero growth to the largest ships available. He noted that currently ships top out at 5,000 passengers.*

*Dan Gregory, West Street asked a question about the lease? Mr. Nass explained that there is not a lease yet but that the lease could be reassigned. He noted that the State does pay property taxes for the time being.*

*Dianne Vreeland noted that an investor will be driven by revenue. Mr. Nass discussed the risk assessment and that the investor will want certainty in order to be willing to make the investment. Ms. Vreeland asked if the investor would be building and running the terminal. Mr. Nass indicated that $20 - $30 million would be too much for MDOT to do. The investor would have a long term ground lease with the Maine Port Authority. It was noted that the improvements would be taxable.*

*Kristy _____ asked if the timeline would be no building for some time?*

*Luis Ajamil noted that many islands have transitioned from tendering to piers because it enhances the visitor experience.*

*Donna Karlson noted that the town is impacted by the visitors including but not limited to the ships. She is not opposed to visitors but is concerned about who we are as a town and how we attract visitors. The closeness of the pier and the size of the ships and the proposed length of the pier are a matter of scale. The community needs to be involved to discuss the size and aesthetic. She asked who sets the passenger caps and it was answered that the Town Council does so.*

*Elery Quinn expressed concern about the length of the proposed pier and the impact it would have on the town. Concerned that the town is losing its character.*

*Mr. Ajamil noted that the length of the pier is partly a function of dredge or not dredge.*

*Eben Salvatore reminded the group that the state of Maine is given a three year window to do this. If it is not done this site will be developed with something else and this opportunity will be lost.*

*Doreen Willit stated that this is a big part of the economy and that we need to look at how much we can take.*

*Ms. Vreeland discussed her conversations with weekly renters who have expressed disappointment with the downtown being crowded.*

*Dennis Brocale mentioned a law suit and made a comment that the Town Planner should be working on this question.*

*Mr. Grief noted that Bar Harbor is not comparable to New Brunswick. Without the terminal we already are overcrowded and traffic is congested.*

*Paul Paradis spoke about the history of this site. He cited the 2007 Comprehensive plan that encourages the redevelopment of the terminal which was voted on by the Town. The Town approached the state in 2009 citing concerns that the terminal would be lost. The B&A study researched the best path. The Town*

*Council has had this in its goals for years. MDOT and MPA need to know that the site can support the proposed use. The Planning Board can hopefully provide the assurances that the state and developers will need from the Land Use Ordinance. He noted that ownership by the town is a year or a year and a half to acquire and we may not have that much time. This is very impactful for the town.*

*Joe Cough asked about how the passenger fees are set. It was answered that the fees are set by the Council but are negotiated with the industry.*

*Barbara Fenderson discussed the cap on passengers and the leeway to the cap that is in the Harbormaster's authority. What happens to the caps and leeways if the terminal is constructed? Mr. Paradis stated that he does not know. It would be reviewed by the Cruise Ship Committee and the Council. The discussion is all conceptual at this point.*

*Mr. Paradis stated that the Maine Port Authority is making a decision on this and needs the Planning Board to send a message.*

*Mr. Cough thanked the attendees for their participation.*

*The Maine Department of Transportation and the Maine Port Authority want to be involved.*

## V. ADJOURNMENT

*Mr. Fitzpatrick moved to adjourn the meeting at 4:59 pm. Mr. Cough seconded the motion. The Board voted four in favor and none against the motion to adjourn.*

***Signed as approved:***

10/19/16

**John Fitzpatrick, Secretary** **Date**
**Planning Board, Town of Bar Harbor**