

**Bar Harbor Planning Board
April 17, 2019
Council Chambers – Municipal Building
93 Cottage Street in Bar Harbor
4:00 PM**

I. CALL TO ORDER

Chair St. Germain called the meeting to order at 4:00 PM.

Board calls meeting to order @4:00 PM

Members present were Chairperson Tom St. Germain, Vice Chair Joe Cough, and Secretary Basil Eleftheriou Jr.

Three board members present, two absent

Town staff present were Planning Director Michele Gagnon and Code Enforcement Officer Angie Chamberlain.

II. ADOPTION OF THE AGENDA

Mr. Eleftheriou motioned to adopt the agenda, and Vice Chair Cough seconded. The motion then carried unanimously (3-0) without discussion.

Board adopts agenda

III. EXCUSED ABSENCES

Chair St. Germain noted there were two excused absences: Mr. Fitzpatrick and Ms. Brooks. Both members gave advance notice they would not be able to attend. Mr. Eleftheriou motioned to excuse the absence and Vice Chair Cough seconded. The motion carried unanimously (3-0) without discussion.

Excuse absences: Brooks and Fitzpatrick

IV. PUBLIC COMMENT PERIOD

Chair St. Germain opened the public comment period. When no one opted to speak, he then closed the public comment period.

No takers for public comment

V. APPROVAL OF MINUTES

a. April 3, 2019

Chair St. Germain asked board members if they had had a chance to read the minutes, and whether they had any corrections to offer. Mr. Eleftheriou motioned to approve the minutes from April 3, 2019 and Mr. Cough seconded the motion. The motion then carried unanimously (3-0).

Board approves minutes as presented

Before the sole item of regular business was introduced, Chair St. Germain said he would be excusing himself from the discussion on this application as he has done in the past.

Chair St. Germain excuses himself from following item

VI. REGULAR BUSINESS

a. Completeness Review: SD-2018-01 — Hamilton Hill Subdivision

Project Location: 18 Eagle Lake Road, Bar Harbor (Tax Map 107, Lots 001-000 and 001-002)

Applicant: Kebo Properties, LLC

Application: The applicant is proposing to develop a 16-lot subdivision

Completeness review for SD-2018-01, Hamilton Hill Subdivision

Mr. Eleftheriou introduced the agenda item and explained it was a completeness review. Vice Chair Cough asked the applicant and representative to introduce

themselves and explain what the project is. Chris Swan said he is one of the owners of the project, and Jody O'Neal said she works for the James Sewall Company and that she is working with the applicant to develop the subdivision.

Ms. O'Neal explained it is a 16-lot subdivision. She said one access road will come off of Kebo Street while a smaller road will access lots coming off the subdivision road. Two lots will be accessed off the Eagle Lake Road with a shared driveway. Ms. O'Neal said stormwater and erosion control had been addressed in both the town and DEP applications. She explained what is proposed for stormwater infrastructure. Every lot will have town water and sewer.

Vice Chair Cough said if the application was found complete by the board, a public hearing would be scheduled. He asked if Mr. Eleftheriou had any questions. Mr. Eleftheriou had a couple of questions relating to compliance rather than completeness. He asked about the access road to lots 29 and 30, noting Lot 18 is adjacent. He asked how Lot 18, specifically, would be accessed.

Mr. Eleftheriou asked what the width of the access road is and staff said it is 16 feet. CEO Chamberlain said the road width can be reduced when it is serving fewer than four lots. Mr. Swan said lots 29 and 30 would be accessed by the road in question. Access to lots 17 and 18, he said, would require using the larger road (Hamilton Hill Way). He said the 16-foot-wide road would only serve lots 29 and 30. Eleftheriou said he thought the road had to be 18 feet wide if it was serving more than two lots. CEO Chamberlain affirmed it can be 16 feet for four or fewer lots and when it is limited by zoning, covenant or deed restriction to eight dwelling units or fewer.

Discussion re. width of road

Mr. Eleftheriou asked if a T turnaround would be required at the end of the access way for those two lots. Discussion ensued, and it was clarified that the road will connect with Kebo Street. Vice Chair Cough asked if the length of the road had any bearing on the discussion. CEO Chamberlain said there is a 2,000 foot regulation but that is for dead-end streets and technically this will not be a dead-end street. Vice Chair Cough asked questions about deeds, access and road use. Discussion followed, and Mr. Swan offered an explanation. Mr. Swan said in speaking with the fire chief, the reason a T turnaround will not be required is because fire trucks will still be able to exit out that road.

Vice Chair Cough said his question was about future ownerships, permission and rights. He asked if there was a way to memorialize town access to the exit (for emergency vehicles). Mr. Swan said he thought that was unnecessary. He said his view is that emergency vehicles can use it at will. The road in question also serves to access another parcel that is not part of this subdivision.

How to ensure that road will not dead end

Mr. Eleftheriou had a question about the lot summary table, which Ms. O'Neal answered. Vice Chair Cough and Mr. Eleftheriou said they did not have further questions. Vice Chair Cough confirmed with staff that the only capacity standard missing is for water.

Mr. Eleftheriou made a motion to waive the following submissions, per paragraph 163 of the Land Use Ordinance, that it would not unduly restrict the

review process as it is not necessary for the board to complete the review process: 5B, SLODA permit; 9F, lot monumentation; and also capacity statement 6E from the water department. Mr. Eleftheriou noted the fire chief had submitted an addendum to his previous capacity statement. Vice Chair Cough asked for clarification if Mr. Eleftheriou was waiving the submission of the water department, and Mr. Eleftheriou said yes, because it was not currently present. Mr. Eleftheriou added that the waived submissions would be required before the issuance of any building permits. Vice Chair Cough seconded the motion.

Mr. Eleftheriou asked if his motion was satisfactory to staff. Planning Director Gagnon said she believed the applicant's intent was to apply for the SLODA permit after getting board approval for completeness, and would then agree to provide the actual permit to the code enforcement officer prior to obtaining building permits. She said monumentation would also be a condition of securing building permits. Gagnon said the only thing that would be necessary for the next Planning Board meeting would be a letter from the water department.

Need Water Dept. capacity letter for public hearing/compliance review

In response to a question from Gagnon, Mr. Eleftheriou said he was just waiving the specific submissions for completeness and affirmed that his motion said they would be required before any building permits were issued. Vice Chair Cough noted the SLODA permit might be necessary as a condition for approval, and not just to obtain a building permit. Planning Director Gagnon agreed it would be a condition of approval during compliance review. Mr. Eleftheriou said he was agreeable to modifying his motion to that effect, and Vice Chair Cough then seconded the motion. The motion then carried unanimously (2-0).

Vice Chair Cough said that completed the completeness review. He asked the applicant if they understood what was required for compliance review, and Mr. Swan said he did understand. Mr. Eleftheriou then noted his motion only related to waivers, and that as such the board had yet to actually vote on completeness. Vice Chair Cough agreed. There was confusion over whether the board had voted on Mr. Eleftheriou's motion, and they voted again (2-0).

Mr. Eleftheriou made a motion to find the application SD-2018-01 Hamilton Hill Subdivision complete and to schedule a public hearing for Wednesday, May 1. Planning Director Gagnon said per board action at an earlier meeting, staff had gone ahead and put a public notice in for a hearing on that date because if staff had waited until after the April 17 meeting they would not have been able to meet the relevant deadlines. Mr. Eleftheriou then restated his motion to find application SD-2018-01 complete.

Board finds Hamilton Hill Complete

Vice Chair Cough asked what the submittal deadline for the May 1 meeting would be, and Planning Director Gagnon said she believed the applicant had already submitted everything. Vice Chair Cough asked if that included SLODA and Planning Director Gagnon said it did not. Planning Director Gagnon clarified that she did not think the applicant intends to submit its SLODA for Planning Board review but rather to submit demonstration that they have obtained the permit prior to beginning

any road construction or other infrastructure improvements.

Ms. O'Neal said it was her understanding that when the project comes back for compliance review, the board could approve it with a condition that the site law permit be approved and that the applicant not start work until the site law permit is secured. She said a copy of the permit would be provided to the town and that the applicant could then begin work. She said the applicant was just trying to "sequence the... process in a way that is manageable." Both board members indicated they were satisfied with the explanation. **Vice Chair Cough then seconded Mr. Eleftheriou's motion, and without further discussion it carried unanimously (2-0).**

Ms. O'Neal asked board members if they foresaw any issues that would cause complications during compliance review. Planning Director Gagnon said staff did not have any issues. Vice Chair Cough said he didn't think there were any glaring issues, but noted there were two members whom he could not speak for (Mr. Fitzpatrick and Ms. Brooks). He also noted members of the public who might have questions could direct them to staff. Ms. O'Neal noted she would be sending revised sheets to the Planning Office, the version to be recorded at the Registry of Deeds, because it has more exhibits on it.

In response to a question from Vice Chair Cough, Ms. O'Neal said there would be no changes to the plans but offered drainage easements as an example of the additional exhibits. Mr. Swan said there would be no physical changes, just notations and exhibits. Ms. O'Neal affirmed that statement. Vice Chair Cough said he had no reason to think that would not be allowed. He said it seemed like a clarification rather than a new submittal.

Mr. Eleftheriou asked if the applicant was still working with the town on a water tower issue. Mr. Swan said they are and that it is in the town's hands at this point. He said the matter does not have an impact on the plan in front of them, however.

VII. OTHER BUSINESS

Chair St. Germain returned to the meeting and addressed vacation rentals. Chair St. Germain referenced his comments at the April 3 meeting about summarizing his thoughts on the matter. He said he had communicated with Council Chairman Gary Friedman who encouraged Chair St. Germain to revise some of his points on the subject. That led to a meeting with Planning Director Gagnon, CEO Chamberlain and Town Manager Cornell Knight about how to proceed on the subject. He noted Planning Director Gagnon had drafted a worksheet which was sent to board members on April 16.

Vacation Rental

Chair St. Germain said he thought the worksheet did a good job in identifying the points involved in the two subjects and demonstrating how it will be a long-term process. He said he thought some items would not be able to be addressed before November. He asked if the board would be willing to identify the steps that need to be taken and when they will take them.

Discussion ensued on the history of that motion, and Chair St. Germain paraphrased

part of the Council's discussion at that meeting as having the board do its work and identifying what can be done when. Chair St. Germain said he did not think it was realistic to try and accomplish all the items in Item 5, for example, by June 1. He said he thought the board could address the vacation rental issue in a certain way and get through the dormitory issue in that time period, scheduling the requisite public hearing.

a. Dormitory amendment

On the dormitory issue, Vice Chair Cough said he thought the board should just move ahead and deal with the dormitory issue. He said it would not be inconsistent with what the Council asked of the Planning Board. The other two board members agreed. Mr. Eleftheriou asked for the staff's perspective. Planning Director Gagnon offered an assessment of the issue. She said in a draft the board had asked for buffers and screening, but said those cannot be asked for unless there are objective measures put in place so that it can be assessed whether an applicant has met the standards. She said she had developed standards for the board to consider. She said she needed to first review them with CEO Chamberlain.

Dormitory

On another point, Planning Director Gagnon said she was provided a list of zoning districts that the board might want to allow dormitories in but said it still needs input. She said she had seen a lot of licensing language rather than land use language in the draft. She explained what she saw as the difference: that land use is a one-time review, whereas licensing or registration issues are reviewed on a scheduled basis to see if parties are in compliance with the requirements. She said she pulled some of the language out after talking with Chair St. Germain and she said she hoped the board was OK with that. She said it was important to keep land use and other matters separate moving forward.

Licensing language pulled out of proposed dormitory land use language

Vice Chair Cough asked if Design Review was at play in the dormitory issue. Chair St. Germain said it would depend on the district in which they were located. Vice Chair Cough noted buffering and screening would be under that committee's purview. He asked if the Planning Board could refer to those standards in the work that it is doing. Discussion continued on this subject. Planning Director Gagnon reiterated her point that certain issues, such as number of sinks, are licensing and not land use. She said she would like to present something to the board at its next meeting on May 1, without the issues that she sees as licensing included in it. Chair St. Germain said that timeline could allow for a public hearing at the board's first meeting in June on June 5. CEO Chamberlain said that in order to meet the advertising deadlines for June 5, language would need to be finalized by the May 15 meeting. She said the June 19 meeting would be the drop-dead deadline for the board to take any action (schedule a public hearing on dormitories).

b. Vacation rentals

Discussion shifted to vacation rentals. Chair St. Germain invited public comment on the subject. He specifically asked Council Chairman Friedmann if he had any comments. Chair St. Germain noted the vacation rental question will have to be dealt with over time and that if anything is done in November it is just a first step. He said he saw the question as being if anything can be done by November. If the board sees it as a longer-term matter, is there a benefit in doing a short-term proposal in

November knowing that there is more to come in the future?

Mr. Friedmann spoke and said he appreciated the work the Planning Board is doing. He said the Council has identified the issue of housing as its top priority for the year. Noting the hazard of trying to speak for the whole Council, he said there seems to be some frustration with the back and forth between the two bodies (Council and Planning Board). He recounted some of the recent history on the issue. He said he saw the overall intent of the motion passed by the Council on April 2 as suggesting that the Planning Board consider all of the specific things the Council identified, understanding that the board will tinker with it. Mr. Friedmann said the Council does not see its role as writing land use language. He said the motion was passed with the intent of giving the Planning Board something to work with.

**G. Friedmann
speaks about VR**

Mr. Friedmann said the biggest question in his mind is whether there should be a band-aid fix for hosted rentals and a limitation on non-hosted rentals on the November ballot. He said he believes the band-aid fix is popular especially because many people are in violation for one reason or another. He noted the proposed moratorium had failed, but said the Council does want to tackle the issue of non-hosted rentals. He said dealing with hosted but not addressing non-hosted essentially sends the message that the town "is up for sale." He said the Council wants to address the "erosion of properties [available] for year-round families." He said not addressing the matter in November means the town will just lose that many more units until it is addressed.

Vice Chair Cough said he appreciated Mr. Friedmann's comments, but said he wanted to be careful in relation to being seen as doing the Council's or the Council Chairman's bidding. He said he still has questions about hosted vs. non-hosted rentals, with regard to definitions. He asked specific questions about the subject and said he sees a lot of room for slipperiness on the subject.

Andrew Geel spoke, identifying himself as both an innkeeper in town and a member of the Design Review Board. He asked for clarification if vacation rentals are different than transient accommodations (TA). Chair St. Germain said currently, vacation rentals are permitted by the code enforcement officer and are allowed in almost every district. TA, meanwhile, varies by district. Mr. Geel asked how different definitions, existing and potential/proposed, compare to each other. He also said if a new use is allowed, he hopes that it will be held to the same standards (especially parking). He noted parking is an increasingly important issue, and wanted to ensure there was no "end run" around parking regulations.

**Geel asks if VR is
different than TAs
and state concerns
about parking**

Chair St. Germain responded. He said parking is on the table for discussion, and how parking requirements will be incorporated into vacation rentals if that use remains as it is. CEO Chamberlain noted parking is already required for dwelling units, except in the downtown. She said she often hears vacation rentals don't need parking but said that is not accurate. In response to a question from Vice Chair Cough on whether the parking space is required for a house or a room to let, she said a room is not a dwelling unit. In response to a question from Mr. Geel about renting seven rooms in one house, Chair St. Germain said in meeting with the Fire Marshal's Office they do not see that as a possibility (and that the maximum number

or rooms rented in one house might be three).

Chair St. Germain addressed a specific question to Mr. Friedmann: would a special town meeting be a reasonable possibility, so as not to let a whole year go by, to address the subject? Noting he was not speaking for the Council as a whole, Mr. Friedmann said he did see it as a possibility. He said he sees the current situation as a "crisis." Noting that more than 25 percent of the town's dwelling units are being used for vacation rentals, he said it edges closer to an emergency with every passing year. He said he would be willing to advocate at the Council level for a special town meeting and wants to put the matter on the Council's next regular meeting agenda.

Vice Chair Cough said he sees a special town meeting as an option, even though it can be expensive. He asked how much could realistically be worked on to get proposed changes to a special town meeting vote. If there are only small changes, he questioned the worth of a special town meeting to address them. He asked where the board should direct its energy and work. Board members discussed what the timing requirements are for a special town meeting. CEO Chamberlain said she did not have specific timing requirements in front of her, but imagined they would be similar to those of a regular town meeting. She said the town clerk could say for sure. The possibility of an emergency town meeting was mentioned by Vice Chair Cough.

Planning Director Gagnon said a special or emergency town meeting would give the board time to work but asked if it would give enough time to answer the core questions and address the key issues. She asked this in relation to the idea of the housing study that has been proposed. She said all stakeholders need to be looked at and considered in order to come up with solutions that are fair and equitable. She said coming up with a short-term solution without doing a study would not achieve that goal. She referenced Mr. Friedmann's comments from earlier in the meeting. Vice Chair Cough noted Mr. Friedmann was not speaking for the whole Council.

Referring to the vacation rental spreadsheet in the Planning Board packet, Vice Chair Cough said he thought Item #5 (to incentivize housing development) might be the best option. He said he would like to see that worked on. He said board members could discuss what three items are tops for them, but such a discussion would be best with all board members present. Chair St. Germain said there are two meetings left at which the board could do that. He said he sees dormitories as moving forward, and reiterated that he liked what Mr. Friedmann called the band-aid approach. He said it would be worth holding a public hearing for that. Chair St. Germain said Item #5 could be complex, though Vice Chair Cough said it did not need to be if a limited number of specific zones were looked at.

Chair St. Germain asked the other board members if they had thought about what he had mentioned at a previous meeting: that if people feel TA is a better route than vacation rentals, that the board could be deluged with TA site plan applications. Mr. Eleftheriou said because of the current non-enforcement situation, he did not see that as likely. Vice Chair Cough said he thought it made sense to pigeon-hole things into TA or B&B, rather than hosted/non-hosted, because the language already exists. He said he thought using new definitions would end up being more burdensome. In

response to a question from Chair St. Germain, Vice Chair Cough said he would not favor a public hearing right now on the so-called band-aid approach.

Chair St. Germain said he did not foresee lots of questions or discussion at a public hearing on the proposed dormitory amendments. Discussion went to what the band-aid approach involved, and whether it should include hosted vs. non-hosted language. Chair St. Germain said he agreed with Vice Chair Cough's earlier comments on that specific point. Chair St. Germain said he did not think the board could "successfully do that surgery at this point." Mr. Eleftheriou said he thought the host could simply be defined as the owner of the house in question. He referred to Planning Director Gagnon's comments at the previous meeting about residential rental uses vs. renting as an economic endeavor.

Planning Director Gagnon encouraged the board to consider at least changing the definition of vacation rental to include a dwelling unit "or a portion thereof" for vacation rentals. She said doing that would make people who are renting to share specific space within their home to be legal and in compliance. She said alternate language in the same spot could be "in whole or in part." She said such a change would not negatively impact the housing stock. Vice Chair Cough said he was supportive of that idea.

Mr. Eleftheriou said he did not support reducing the minimum stay to fewer than five days without a study being completed first. He said he did not want to rush anything just to apply a band-aid. Other than the price tag, he questioned what the reluctance was to do a housing study — he said the town needs good information.

Vice Chair Cough said the Council has the ability to impose a moratorium if it sees progress being made. He said that might take some pressure off as far as the timeline. He called it a distasteful option, but said it is one that exists. Planning Director Gagnon said she could bring back two options for the May 1 meeting: one with the new language after dwelling unit while keeping the number of days as it is now, and the other with the number of days lowered to three. Vice Chair Cough said he would prefer to see number of nights rather than days. He and Mr. Eleftheriou agreed they would like to keep changes to a minimum, and ideally just add the "or a portion thereof" type language. Gagnon clarified the direction she was being given: add language after the words dwelling unit in the vacation rentals definition to allow a portion of a dwelling unit to be rented. Chair St. Germain said he thought a second option would be reducing five days to three days, while Vice Chair Cough said a third option could be five nights. Discussion ensued.

Chair St. Germain said his takeaway from previous public comment was people wanted to see the number of days reduced. He said he had heard from people in the lodging business that the nature of travel has changed and that people are doing shorter stays. He said if the number of stays is not changed, it could put vacation rentals in Bar Harbor at a competitive disadvantage compared to vacation rentals in surrounding towns. Vice Chair Cough said he agreed with the chair's logic, but said he was not sure it was an issue for the Planning Board to address right now. Board members disagreed on whether the number of days equals the same number of nights (Vice Chair Cough said they should be the same, while Chair St. Germain

said it should be one fewer night than the number of days).

Discussion continued on the subject, and what advantages/disadvantages the current five-day requirement creates for different parties. Vice Chair Cough noted the five-day rule had been in place since vacation rentals were first addressed in the ordinance years ago. Chair St. Germain said ordinances are amended as needed, and that vacation rentals have changed. Vice Chair Cough said those changes have been to the detriment of the town. Discussion followed. Chair St. Germain said setting the minimum stay at a higher level than what the market is demanding does not serve anyone well. Mr. Eleftheriou said it does serve neighborhoods well, and that reducing the minimum stay would negatively impact neighborhoods.

Planning Director Gagnon said it likely depends on what neighborhood or zoning district it is taking place in. She said vacation rentals are not a matter of good or bad, but rather how and where they are done. She noted such rentals are an economic engine, but are also a detriment to the social fabric of certain neighborhoods. She said a three-day minimum in certain areas is not a bad idea. She noted that in some places, covenants are reportedly being violated and it creates stress because residents do not want to tell-on or turn-in their neighbors. Mr. Eleftheriou echoed the point about shorter stays not being an issue in certain places but not being appropriate elsewhere. General discussion followed. Mr. Eleftheriou said the board should make its case to the Town Council for having a housing study done.

Chair St. Germain shared a suggestion he had heard recently, using Planned Unit Development (PUD) requirements found in the town's Land Use Ordinance in relation to vacation rentals: that the only way someone could get a vacation rental license going forward would be by doing a PUD (i.e., build a certain number of non-vacation rental houses and get one vacation rental license). He said he did not think there was support among town decision makers for making licenses a commodity, but he said he thought it was an interesting suggestion. He said he foresees some sort of mechanism being put in place going forward to limit the number of vacation rentals, because he did not see the current situation remaining unchanged into the future. He wondered if the PUD suggestion could be a good incentive.

Planning Director Gagnon summarized the idea as putting a dynamic (subject to the number of other housing units built) rather than stagnant (one set number) cap on the number of vacation rental licenses. Vice Chair Cough noted PUDs are harder to do than regular subdivisions. There was a discussion about how vacation rentals and density relate to one another, both at present and potentially into the future, and how vacation rentals and new housing developments could relate.

VII.) BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA

No board members had any other comments to add.

VII.) ADJOURNMENT

Vice Chair Cough motioned to adjourn at 5:56 PM, and Chair St. Germain seconded. The motion then carried unanimously (3-0).


Need for Housing Study

No new comments

Board adjourns meeting @ 5:56 PM

Minutes approved by the Bar Harbor Planning Board on May 1, 2019:

5.01.19
Date



Basil Eleftheriou Jr., Secretary
Bar Harbor Planning Board