

**Bar Harbor Planning Board  
Wednesday, May 6, 2020 — 4:00 PM  
Council Chambers – Municipal Building  
93 Cottage Street in Bar Harbor**

*The meeting was held via the Zoom online meeting platform,  
and was broadcast live on Spectrum channel 1303 in Bar Harbor  
as well as online via Town Hall Streams (where it is also archived).*

**I. CALL TO ORDER**

Chair Tom St. Germain called the meeting to order at 4:02 PM.

**Call to order  
at 4:02 PM**

Planning Board members present were Chair St. Germain, Vice-chair Joe Cough, Secretary Basil Eleftheriou and members Erica Brooks and John Fitzpatrick.

**All five board  
members present**

Town staff members present were Planning Director Michele Gagnon, Code Enforcement Officer Angela Chamberlain, Deputy Code Enforcement Officer Patrick Lessard and Assistant Planner Steve Fuller.

**Four town staff  
members present**

**II. ADOPTION OF THE AGENDA**

**Mr. Fitzpatrick made a motion to adopt the agenda. Before it could be seconded, Mr. Eleftheriou noted staff had asked for a change in the minutes to be approved. Mr. Eleftheriou then made a motion to remove the consideration of approval of minutes from the April 10, 2020 and April 29, 2020 meetings from the present agenda, and to add the consideration of approval of minutes from the March 12, 2020 meeting to the present agenda. The motion was seconded by Vice-chair Cough. Secretary Eleftheriou asked Assistant Planner Fuller to change the date of approval of the minutes of the March 12, 2020 meeting to May 6, 2020. The motion passed unanimously (5-0) on a roll-call vote.**

**Approval of minutes  
from April 10 and  
April 29 meetings  
removed from  
agenda, minutes  
from March 12  
meeting added**

**Agenda approved as  
amended, 5-0**

**III. EXCUSED ABSENCES**

None.

**No absences  
to excuse**

**IV. PUBLIC COMMENT PERIOD**

Chair St. Germain opened the public comment period at 4:05 PM and Assistant Planner Fuller read aloud the number for members of the public to call to make comment. As there were no comments, the public comment period was closed at 4:06 PM.

**No comments from  
the public**

**V. APPROVAL OF MINUTES**

- ~~a. April 10, 2020~~
- ~~b. April 29, 2020~~
- c. March 12, 2020

**Minutes of April 10  
and April 29  
removed from  
agenda (see above)**

**Mr. Eleftheriou made a motion to approve the minutes from the March 12,**

**March 12, 2020**

2020 meeting, with the condition that the approval date shown in the minutes be changed to May 6, 2020. Vice-chair Cough then seconded the motion, which carried unanimously (5-0) on a roll-call vote.

minutes approved (with May 6 approval date), 5-0

## VI. OLD BUSINESS

### a. Public Hearing/Compliance Review for Site Plan SP-2020-02 - Bar Harbor Oceanside KOA Project

**Location:** 135 County Road — Tax Map 211, Lot 001, and encompassing ±2.63 acres of land in the following zoning districts: Town Hill Corridor, Town Hill Residential and Shoreland Limited Residential

**Applicant:** Bar Harbor Oceanside KOA

**Owner:** Kampgrounds of America, Inc.

**Application:** To construct a manager's house and laundry/maintenance facility; to relocate the sewerage dump station, propane filling tank and dumpsters out of the County Road right-of-way and along a new camp road on the site; to demolish the existing old log cabin and other structures on the site; and to close one of the four existing curb cuts on County Road.

Public Hearing/ Compliance Review for SP-2020-02, Bar Harbor Oceanside KOA Project

Jim Kaiser, representing the applicant, told the board that the applicant had been working with staff to clarify questions that had arisen at a previous meeting regarding lot coverage and that an updated copy of the site plan had been provided. A connection that had been proposed between the dump station driveway and the residential home maintenance building was removed, said Kaiser, and he explained why an entrance near the dumpsters had been narrowed to a one-way exit. The lot coverage is down to just under 15 percent, he added.

Jim Kiser present to represent the applicant; he explains changes in the application

Chair St. Germain opened public hearing at 4:10 PM. As there were no members of the public calling in it was subsequently closed at 4:11 PM.

No public comment during public hearing

Chair St. Germain asked if staff or board members had any comments. Mr. Fitzpatrick asked about a culvert on the site, and Mr. Kiser said he would meet with the public works director when crews were on site. Planning Director Gagnon noted that a proposed condition of approval the applicant must meet is that it can demonstrate that an existing culvert has a capacity to handle the additional stormwater runoff from the development before permits can be issued.

Question from the board, J. Kiser and staff respond

**Mr. Fitzpatrick made a motion to approve application SP-2020-02 - Bar Harbor Oceanside KOA as it complies with the Land Use Ordinance specifically 125-67 General Standards, 125-68 Shoreland Standards and 125-69 Standards for Particular Uses, Structures or Activities, specifically C., Campgrounds, as outlined in the draft decision in the packet, dated May 6, 2020 (he noted that the condition referenced above is stated in the draft decision). Mr. Eleftheriou seconded the motion, and it carried unanimously (5-0) on a roll-call vote.**

SP-2020-02 — Bar Harbor Oceanside KOA: APPROVED (5-0), per draft decision of May 6, 2020

**VII. REGULAR BUSINESS**

**a. Completeness Review for SP-2019-03 — 56 Cottage Street Parking Area**

**Project Location:** 56 Cottage Street — Tax Map 104 Lot 327, encompassing ±0.45 acres in the Downtown Village II zoning district

**Applicant/Owner:** Karol A. Foss

**Application:** To develop a private, 42-space private parking area at the corner of Cottage and Kennebec streets. The project would use a single entrance/exit from the existing westerly curb cut on Cottage Street. No entrance or exit is planned on Kennebec Street. The project includes construction of a sidewalk-accessible landscaped esplanade along Cottage Street.

After introducing the agenda item, Mr. Eleftheriou said he would recuse himself because he was an abutter who had received a notice of the meeting in the mail. Ms. Brooks noted she was in the same position. Discussion ensued on how to handle this from a technological perspective.

**Vice-chair Cough moved to recuse Mr. Eleftheriou and Ms. Brooks from this agenda item because they were both noticed abutters. Mr. Fitzpatrick seconded the motion, and it then carried unanimously, 3-0, on a roll-call vote (Mr. Eleftheriou and Ms. Brooks did not vote on the motion). Both recused members then muted themselves for the ensuing discussion, and with that the board’s voting membership was reduced to three members.**

Engineer Greg Johnston, representing the applicant, recounted the review process so far and outlined the project to the board, explaining that it is a half-acre vacant lot that the applicant is proposing to develop into 42 parking spaces, leased in blocks. “The owner would negotiate blocks of parking for workers of businesses in town,” he explained, “based on their charitable contributions to three nonprofits in town.”

Johnston said a lot of concerns had been raised by neighbors in an earlier meeting regarding the side along Kennebec Street. He said the applicant had eliminated any ingress/egress there and had “done a lot towards landscaping,” adding 20-plus flowering trees and other elements. He said there had also been discussions with the abutting Central Inn about buffering. Mr. Johnston spoke about what was submitted after meeting with the Technical Review Team.

Chair St. Germain said he did not see capacity statements from public works, water or sewer, and also asked about Design Review Board. He noted the plan had been adjusted in response to feedback from the public. Vice-chair Cough called it a “great plan” and said he appreciated the effort. There was a discussion about particular parking spaces within the plan.

**Completeness Review for SP-2019-03, 56 Cottage Street Parking Area**

**B. Eleftheriou and E. Brooks note they are abutters, and will recuse themselves**

**B. Eleftheriou and E. Brooks recused by board due to being noticed abutters, 3-0**

**Greg Johnston present to represent the applicant, explains the project**

**Note of changes to the plan, including ingress/egress and landscaping**

**Questions about capacity statements and DRB review**

Mr. Fitzpatrick asked if the plans would be submitted to the Design Review Board; Johnston replied that they planned to do so on May 7 for a meeting of the Design Review Board on May 14. Mr. Fitzpatrick said that he would like more information on the plants and planting schedule. The landscape plans, he said, are visually “fantastic,” but said what is typically provided is a planting schedule. He also spoke about a performance and plant maintenance guarantee, “so three years from now this looks like this and not a desert wasteland because the irrigation got turned off and the parcel wasn’t maintained.” Chair St. Germain said he agreed with this. Mr. Johnston said he appreciated the constructive comments.

**G. Johnston addresses DRB**

**J. Fitzpatrick wants performance and plant maintenance guarantee**

On the subject of waivers, Mr. Fitzpatrick said he was comfortable with all of the requests except for 4 C. **Mr. Fitzpatrick moved to grant the waivers requested by the applicant as listed on the checklist with the exception of 4 C, proposed performance and plant maintenance guarantee, as they will not unduly restrict the review process, are inapplicable, unnecessary or inappropriate for a complete review for application SP-2020-03. Vice-chair Cough seconded the motion. Without further discussion, the motion passed unanimously (3-0) on a roll-call vote.**

**Grant requested waivers, except 4C (performance/plant maintenance guarantee): APPROVED, 3-0**

Attention turned to completeness. Chair St. Germain recounted the board’s typical approach: that if items are missing, to find the application incomplete but to schedule it for a public hearing pending receipt of the missing items by a date certain. The other board members present said they were OK with that.

**Mr. Fitzpatrick moved to find application SP-2019-03 — 56 Cottage Street Parking Area incomplete per the Bar Harbor Land Use Ordinance Section 125-66, that the items to be provided prior to the scheduled public hearing shall be capacity statements from water, sewer and public works departments and Design Review Board certificate of appropriateness. Mr. Fitzpatrick asked staff to schedule a public hearing on June 3, 2020. Vice-chair Joe Cough seconded for discussion but asked whether the board could schedule a public hearing by finding an application incomplete. After some discussion it was determined that that is the way the board has proceeded in the past and members decided to move forward with the motion. Mr. Fitzpatrick added to his motion, with agreement from Vice-chair Cough, to require that the missing materials be submitted by May 14, 2020. The motion then carried unanimously (3-0) on a roll-call vote.**

**SP-2019-03 — 56 Cottage Street Parking Area INCOMPLETE (3-0), set for public hearing on June 3, 2020, pending receipt of missing items as specified in the motion by May 14, 2020**

**b. Completeness Review for SD-2019-03 — Destination Health Project Location: 124 Cottage Street — Tax Map 104, Lot 159, encompassing ±0.16 acres of land in the Downtown Village II zoning district  
Applicant/Owner: Destination Health, LLC  
Application: To construct a two-story, four-unit apartment building**

**Completeness Review for SD-2019-03, Destination Health**

(constituting a subdivision, by unit, under state statute) on the Brewer Avenue end of the parcel.

Chair St. Germain recounted the review process to date. Architect Stewart Brecher, representing the applicant, briefly presented the project, noting that it was coming for subdivision review because there are four units within the building. He said he believed he had responded to all board and staff requests. He apologized for multiple versions of the site plan, due to revisions being made.

**Stewart Brecher present to represent the applicant and explain the project**

Vice-Chair Cough asked whether a dumpster would be included, and if so, where it might be located. Mr. Brecher replied that there will likely be rollout bins but no dumpster, as they are not expected to generate a significant amount of waste.

**Question on trash**

Mr. Eleftheriou asked if both buildings on the property will have sprinkler systems; Brecher said they will be, with a residential system in the apartment building and a different system in the Destination Health commercial building. Mr. Eleftheriou asked what the typical threshold is for asking for a capacity statement from the school department, and CEO Chamberlain responded.

**Sprinkler system question**

Mr. Eleftheriou also asked about the location of the nearest fire hydrant, and Mr. Brecher responded. Mr. Eleftheriou asked about map and lot numbers on the site plan. Planning Director Gagnon said it is on sheet C100 dated April 28, 2020. Mr. Eleftheriou also asked about the lighting plan and Mr. Brecher responded. Mr. Fitzpatrick asked about waivers and Mr. Brecher responded.

**Mr. Fitzpatrick moved to accept the following waivers as requested by the applicant (numbers and letters correspond to those in the checklist): 1F; 3C; 4 A, B, C, D and E; 5 A and B; 7 B, C, D, G and F; 7.1 A, B, C, D and E; 9 H, I, J, K, L, Q, R, S, W, X, Y, Z, CC, DD, EE, FF, GG and JJ; 11 C, D, E and F; 12 A through J; 14 C, D, and E; 15 A; 16 A and B; 17 A; 18 B; 19 A; 20 D; 22 A; 23 A and B; 24 C and D; 25 A, B and C; and 26 A through F. Mr. Eleftheriou seconded the motion and it carried unanimously (5-0) on a roll-call vote.**

**Grant waivers requested by the applicant, as listed individually: APPROVED, 5-0**

At 4:56 PM, Chair St. Germain opened the public comment period. Assistant Planner Fuller read the contact numbers aloud for anyone following the meeting online or on TV. As there were no comments, the comment period was closed. Chair St. Germain did note a written comment was received prior to the meeting

**No public comment**

Chair St. Germain noted that staff had provided a list of missing items, including capacity statements from the Water, Sewer and Public Works Departments, a signed copy of the survey that's going to be recorded at the Registry of Deeds and signed by a surveyor, pre-and post- development runoff information, and sprinkler system design details. The architect said he would provide larger plans for the final meeting. Mr. Fitzpatrick asked for more information about lot coverage calculations. There was discussion about old plans versus new plans.

**Discussion of missing materials**

Chair St. Germain noted that the written public comment that was received related to parking. He noted that in this zoning district, parking is not required but that the applicant is providing it (four on-site spaces) nonetheless.

Note on comment about parking

**Mr. Fitzpatrick moved to find application SD-2019-03 — Destination Health incomplete per the Bar Harbor Land Use Ordinance Section 125-66, requiring receipt of missing capacity statements, revised parking space annotations on drawing C-100, placing the survey plan as a legible insert on the plat plan, and provision of flow sprinkler system design calculations and details, if provided not later than May 14, 2020, and for staff to schedule a public hearing on June 3, 2020. At the suggestion of Planning Director Gagnon, Mr. Fitzpatrick also added to his motion to require information about stormwater flow (cubic feet per second) between pre- and post-development. Mr. Eleftheriou seconded the motion. The motion then carried unanimously (5-0) on a roll-call vote.**

**SD-2019-03 — Destination Health: INCOMPLETE (5-0), set for public hearing on June 3, 2020, pending receipt of missing items as specified in the motion by May 14, 2020**

**c. Completeness Review for SP-2019-06 — Theede Pier**

**Project Location:** 481 Eden Street — Tax Map 224, Lot 009, encompassing ±1.73 acres of land in the Village Historic and Shoreland Limited Residential zoning districts (the proposed project is located entirely within the latter district)

**Applicant:** Frenchman’s Bay Boating Co, Inc.

**Owner:** Frenchman’s Bay Real Estate Holdings, LLC (Steve Theede)

**Application:** To construct a new concrete retaining wall fastened to the ledge at the top of the bank with a concrete slab to hold the shore end of a 120’x6’ aluminum pier, with a 10’x10’ transition platform at the end of it to accept the ramp, which is at an angle to the pier. From there, an 80’x4’ gangway extending to two, 16’x24’ timber floats, moored with two granite moorings and chain.

**Completeness Review for SP-2019-06, Theede Pier**

Bob and Brooke Collier, representing the applicant, explained the project: a seasonal residential dock being built for Mr. and Mrs. Theede, providing specific dimensional details. There were no immediate questions or comments from the board

**Bob and Brooke Collier present to represent applicant**

At 5:13 PM, Chair St. Germain opened a public comment period and Assistant Planner Fuller provided the contact information for anyone watching. As no members of the public called in, the comment period was subsequently closed.

**No public comment**

**Mr. Fitzpatrick made a motion to accept waivers as presented, which was seconded by Mr. Eleftheriou. The motion then carried unanimously (5-0) on a roll-call vote.**

**Accept the waivers as presented: APPROVED, 5-0**

Chair St. Germain read aloud items staff had noted were missing, including the

percentage of pre- and post-development lot coverage, as well as a submerged land lease. He said that the permit process includes “an exhaustive review, including state agencies,” and said that clearance letters from those state agencies were not included in the submission. Chair St. Germain noted that the Code Enforcement Officer will issue a flood hazard development permit down the line. Planning Director Gagnon clarified that the application did include the lot coverage in percentage figures, just not in square footage. He asked for any other completeness issues identified by board members.

Discussion of items missing from application for compliance review

Mr. Fitzpatrick said the difference between current and future lot coverage “is going to be miniscule,” but said it would be nice to have it on the record. He asked about the concrete retaining wall; Mr. Collier replied that the wall is low in height (“Probably not over 12 or 14 inches high,” he said). “So it’s just a leveling pad,” Mr. Fitzpatrick said, and not a retaining wall. Mr. Collier agreed.

Discussion of lot coverage and retaining wall vs. leveling pad

**Mr. Fitzpatrick moved to find the application SP-2019-06 — Theede Pier incomplete per the Bar Harbor Land Use Ordinance Section 125-66 as it is missing pre- and post-development lot coverage in square footage on the plan, the submerged land lease and tier 3 permits (which will include clearance from Inland Fisheries and Wildlife, Maine Historic Preservation Commission and the Critical Areas Program) a Flood Hazard Development permit (which will be issued by the Code Enforcement Officer once the project is approved); pending receipt of items 1 and 2 by May 14, 2020, he asked staff to schedule a public hearing on June 3, 2020. Ms. Brooks seconded, and the motion carried unanimously (5-0) on a roll-call vote.**

SP-2019-06 — Theede Pier: INCOMPLETE (5-0), set for public hearing on June 3, 2020, pending receipt of missing items as specified in the motion by May 14, 2020

**d. Completeness Review for SD-2019-01 — The Farm Subdivision**

**Project Location:** The subject land is located off of Route 3 and Ledgewood Road, on the following tax parcels: Tax Map 207, Lots 43, 44, 56 and 58; Tax Map 208, Lot 81; and Tax Map 214, Lot 4. The land, totaling ±72.78 acres, is in four different zoning districts: Salisbury Cove Corridor District, Salisbury Cove Rural District, Shoreland Limited Residential District and Resource Protection District.

**Applicant:** The Farm, LLC

**Owner:** The Heirs of Chauncey McFarland

**Application:** The applicant proposes to construct a road and extend public utilities to create a 13-lot residential subdivision and retain approximately 30 acres of land in its current undeveloped state.

Completeness Review for SD-2019-01, The Farm Subdivision

Vice-chair Cough said he wished to recuse himself from this application. Mr. Fitzpatrick moved to recuse Vice-chair Cough, as he is the applicant for this project. Mr. Eleftheriou seconded the motion, and it then carried unanimously (4-0) on a roll-call vote (Vice-chair Cough did not vote on the motion). The board’s voting membership was reduced to four members.

J. Cough asks to recuse himself. Board votes 4-0 to recuse J. Cough as he is the applicant

Landscape architect Perry Moore, representing the applicant, gave an overview of the project and what had happened since the board last reviewed it (for sketch plan). Chief among those changes was the relocation of the subdivision road from off of Route 3 to off of Ledgewood Road. He said this was done based upon legal advice that coming in from Route 3 created “the potential for there to be a created nonconformity” involving a double front setback.

**Perry Moore present, along with J. Cough, to explain plan and review changes**

Mr. Moore, via screen sharing, showed the existing conditions site plan and said wetlands had been delineated in all of the parts of the property to be developed. He said the applicant has identified three vernal pools on the property, including one in the northwest corner that’s man-made. Two vernal pools have been designated significant, said Mr. Moore, and he noted the resulting limitations.

**P. Moore presents plan, reviews wetlands and vernal pools**

Mr. Moore said the plan now calls for 13 lots, with the road being moved from Route 3 to Ledgewood Road (through the location of an existing house, bringing the road around the vernal pool and down around the existing wetlands). He said the road has been designed and that each lot has designated septic sites, septic fields, wells, well exclusion zones and building sites.

**Review of how plan has changed from previous meetings**

Two lots in the southern end of the property would be accessed by driveways coming off of a cul-de-sac, meeting the standard in LUO Section. 125-67 B. There are two lots accessed via cul de sac driveways that meet standards in 125-67b, said Mr. Moore.

**Two lots to be accessed from driveways off of cul-de-sac**

Mr. Moore noted the town owns land adjacent to the southeast corner of the property. The applicant plans to meet with the Town Council later in the month to talk about road acceptance and possibly bringing the subdivision road through to access the town parcel. “We need some direction from the council,” said Mr. Moore, adding that the applicant expects to have it before the public hearing.

**Discussion of town-owned parcel and possible future road connection**

Mr. Moore said the applicant is eyeing running three-phase power down the road instead of single-phase, and is seeking a modification of standards to allow utilities to be installed overhead vs. underground. “It’s really expensive to put three-phase underground,” he said. The road has also been lowered because the plan is no longer to put in a fire pond, said Mr. Moore, who added that necessary blasting work would make running three-phase power underground even costlier.

**Discussion of underground vs. overhead power**

Chair St. Germain asked a question about the proposed road. Mr. Moore clarified his earlier remarks about how it might be used to access the adjacent town-owned parcel. He said the applicant’s proposed road meets standards, noting the main stem of the road is 1,947 feet long. He said with the cul de sac factored in, it is longer than 2,000 feet. He said the applicant has asked for a modification of standards on that matter.

**Discussion about road length**

Ms. Brooks asked about what the Town Council’s thinking was on this proposal. Vice-chair Cough, speaking as the applicant, said the Council did not seem to be

**More discussion of town option**



leaning either way and noted that the Council had tabled the matter. He noted that if there were ever a solar farm on the town-owned property, three-phase power lines would be necessary. He said he was “trying to give the town an option if they want it.”

Mr. Moore referred to Section 125-67 G. (2) (d), relating to dead-end streets. He read the last part of that subsection and explained how he saw it relating to this project. He said he recommended to his client that he provide a 60-foot right-of-way from the applicant’s property to the town’s property, with the location not to be fixed at this point. He said he believed that met the standard and also protected the interests of the developer.

Chair St. Germain asked about the subject of street length and the proposed connectivity outlined by Mr. Moore, as well as proposed modifications of standards. He and Vice-chair Cough, as the applicant, discussed the subject of how high the utility poles might be.

Mr. Eleftheriou asked whether initial plans for a gazebo were still in place; Vice-chair Cough, speaking as the applicant, said he would like to but it may have to come later. Mr. Eleftheriou asked about septic systems, and Mr. Moore said they would all be individual septic systems.

Vice-chair Cough said the Fire Chief recommended against a fire pond on the property for maintenance reasons and instead advised that homeowners be required to add residential sprinkler systems, which Vice-chair Cough said would be required to put residential sprinkler systems in their homes. Mr. Moore noted that would be stated on the plat, as well, in the left-hand margin. He elaborated on the matter of sprinklers in the newly built homes.

Mr. Fitzpatrick asked about the applicant’s plan to retain 30 acres in the back and how that land might be accessed in the future. Vice-chair Cough, speaking as the applicant, said he was not certain what would happen but that he was in discussions with a non-profit organization to potentially conserve some of that land. “If we accept the full proposal that they’ve offered, actually we’ll be eliminating a couple of lots in the subdivision,” said Vice-chair Cough.

Mr. Moore referred to exhibits 9 and 9.1 and about sections of the property that are “not in play for development.” Mr. Fitzpatrick said a modification of standard would be necessary to develop a longer road if additional housing was ever proposed back there in the future, and Mr. Moore agreed.

Mr. Fitzpatrick asked about areas flagged by Inland Fisheries & Wildlife and what that meant for future homeowners and limitations on development. A discussion ensued between him and Mr. Moore. Regarding the vernal pools, Mr. Moore said they will be reported as part of the application and that they will show up on future applications as significant vernal pools. He also said the

**P. Moore talks about roads: road length and road location**

**Board members ask questions of the applicant and his representative**

**Discussion on fire sprinkler systems**

**Discussion about remaining land in back of project**

**More discussion between board and applicant and applicant’s representative**

project requires a stormwater permit from Maine Department of Environmental Protection (DEP). There was further discussion on this subject. He said there will need to be a resource protection permit for the vernal pools.

**Questions about vernal pools, flood plains and wetlands**

Mr. Fitzpatrick asked if any of the land is in the 100-year floodplain or subject to flooding or standing water. Regarding the floodplain, Moore replied that he was "certain it is" but needed to look. On the latter question, Mr. Moore said it is shown on the site plan in the form of wetlands, etc. In response to a question about lot coverage, Mr. Moore said it is addressed in notes on plans in section 9 and 9.1 of the application. "The existing lot coverage is about 2 percent on the existing parcel with the roads and the buildings," said Mr. Moore. He said as proposed, Lot 1 will have 4.5 percent lot coverage and Lot 2 will have 4 percent.

**Question on lot coverage**

The roads are outside the 75-foot setback from the vernal pools, said Mr. Moore in response to a question from Code Enforcement Officer Chamberlain. He said there would be some filling of a wetland area via a permit by rule process. He elaborated on that in response to questions from Planning Director Gagnon, and said the permit by rule is only in regard to vernal pools.

**Relationship of roads to vernal pools**

Chair St. Germain asked a question about street design. Planning Director Gagnon asked about a decision the town's attorney had provided on this subject with regard to another proposed subdivision in Bar Harbor.

**Questions about street and road issues**

Mr. Moore referred to a note in the staff report about a culvert under Route 3. He shared the site plan and spoke about ditches, a catch basin and a culvert, and how water flows now and in the future.

At 6:03 PM Chair St. Germain opened a public comment period, noting that it is not required but that the board typically does so. Assistant Planner Steve Fuller read the contact numbers. John Kelly, management assistant for Acadia National Park, followed up on two emails he had sent the board that week and recommended that the Planning Board not waive checklist item 9 FF, and ask the applicant to show the legislative boundaries of Acadia National Park on the plat. There were no other public comments, but Chair St. Germain noted that the board had received several other comments by email prior to the meeting. The public comment period was then closed.

**Public comment period (some emails received prior to the meeting)**

**John Kelly from Acadia National Park wants park's legislative boundary shown on site plan**

Both Vice-chair Cough, speaking as the applicant, and Mr. Moore were opposed to showing the legislative boundaries on the plat. "I'm not inclined to show it," said Moore. "There's no vested rights. There's no limitation on property development. The park has already got it out there on lots of documents that are not binding. I'm loath to continue to make a representation that there's somehow interest in that property when there is none. They may want it, but they haven't expressed any ownership of it yet."

**Applicant and representative not interested in having park boundary shown on site plan**

Mr. Kelly countered that the legislative boundary, which dates to 1986,

“absolutely does have limitations on private property, and it does have a legal basis.” Mr. Moore replied that it is a civil matter, and that it is not for the board to make a determination but rather for a court to decide. Vice-chair Cough elaborated on his opposition to the idea of showing the legislative boundary.

**J. Kelly offers a counterpoint**

Mr. Moore echoed Mr. Kelly and noted the park boundary goes back to 1986. Mr. Moore then the park has had 30-plus years to make an acquisition and hasn't done so: “I'm hesitant to have something like that put on a document that might end up in a title search that's going to confuse a lawyer another 30 years from now. If the park wants to buy it, we can put it there; but until then I don't see that we're required by the Land Use Ordinance nor Maine law to represent something that the federal government has on a planning document as a wish list.” Chair St. Germain said it is a question for the attorney, and Mr. Fitzpatrick agreed.

**More discussion on whether park boundary needs to be shown; board wants legal advice**

Mr. Fitzpatrick and Mr. Moore discussed which waivers the applicant was seeking, as Mr. Fitzpatrick said there are more on the checklist than there are on the cover letter. The conversation provided clarity to both sides.

**Mr. Fitzpatrick moved to grant the waivers requested by the applicant as listed in the cover letter dated April 27, 2020 and as checked in the site plan subdivision application checklist, undated, as follows: 4C, 4D, and 4E; 5C (as it relates to SLODA only); 6C and 6E; 7A, 7B, 7E, 7F and 7G; 7.1 A through E; 9Q, 9X, 9 DD through GG, 9 II; 11 A through F; 15A; 18B; 19 (all); 20 A through D; 21 A through C; 22A; 24 C and D; 25 A through C; and 26 A through F. Mr. Eleftheriou mentioned items 5A (Army Corps/wetlands), 9S (stonewalls, graveyards and fences — Mr. Moore noted there will be a note on the plan saying there are none), 12 L (crosswalk location, none proposed); and 23 B (a full impact traffic analysis — Mr. Moore said the applicant did provide a traffic analysis). Mr. Fitzpatrick modified his motion to include the items Mr. Eleftheriou mentioned, and Mr. Eleftheriou then seconded the motion. It carried unanimously (4-0) on a roll-call vote.**

**Grant waivers as requested by applicant, listed individually, with three items (9S, 12L and 23B) added during discussion: APPROVED, 4-0**

Mr. Fitzpatrick also asked the board and applicant to think about whether an 11-year-old groundwater report is adequate or even relevant, given the amount of development in this area. Mr. Moore said they would have a geologist with them at the next meeting, and added, “That's not old in terms of the way groundwater modeling works.”

**Groundwater study is mentioned**

Planning Director Gagnon said that there is “a lot missing” related to completeness. She said the big piece is stormwater. She said if the applicant does not have everything it needs by the time of completeness review the board could make that a condition of approval. Member Fitzpatrick listed the items missing, which included capacity statements, dimensional requirements for the district and the proposed dimensional requirements for each lot, vernal pools and setbacks and the legend that goes along with them, 100-year flood plain, portions of land subject to flooding and standing water, submission of DEP stormwater

**Discussion of items missing in advance of compliance review at a future meeting**

permit, and then narratives on fire protection, traffic, sight distance and stormwater management. Chair St. Germain asked if board members thought that was enough to continue the completeness review and to not schedule a public hearing at this time. Planning Director Gagnon asked whether board members wanted to add the Natural Resources Protection Act (NRPA) permit by rule for vernal pools.

Continued discussion of missing items, and in particular stormwater management

Mr. Moore said that he didn't have any problems getting the listed items to the board by May 14, 2020, except in regard to stormwater. He said has inclined to "ask that you consider that we have the stormwater review a condition of approval with DEP." Mr. Fitzpatrick said he would be fine with that. Mr. Eleftheriou asked how long the NRPA permit-by-rule process takes; Mr. Moore replied that it takes two weeks after mailing it in. Mr. Moore noted that road plans are also being revised.

**Mr. Fitzpatrick moved to find application SD-2019-01 — The Farm Subdivision incomplete per the Land Use Ordinance Section 125-66 as it is missing the following: capacity statements from public works, police and fire departments; planned dimensional requirements for the district and for each lot; locations of vernal pools, setbacks and legends designating vernal pools and wetlands; the NRPA vernal pool permit; the 100-year flood plain; showing what portions of the land are subject to flooding and standing water; a DEP stormwater permit; and narratives on fire protection, traffic generation and sight distance. Pending receipt of all information requested by May 14, 2020, Mr. Fitzpatrick asked staff to schedule a public hearing for June 3, 2020. He noted that issuance of a final building permit will be contingent upon receipt of approved DEP and NRPA permits. The motion was seconded by Ms. Brooks and then carried unanimously (4-0) on a roll-call vote.**

SD-2019-01 — The Farm Subdivision: **INCOMPLETE** (4-0), set for public hearing on June 3, 2020, pending receipt of missing items as specified in the motion by May 14, 2020

Mr. Moore asked for clarification on what dimensional measurements were being requested. Discussion ensued between him and Planning Director Gagnon. Mr. Moore said he would add a note that listed the setbacks. Mr. Moore expressed concern that it could get confusing that if the data was put on the plat today but the specific dimensional standards changed over the years

Discussion of what dimensional measurements are being asked for

At 6:36 PM, board members agreed to take a five-minute break. be taking a five-minute break. The video was shut off and restarted when they reconvened, which ended up being at 6:44 PM. Voting membership returned to five with the return of Vice-chair Cough from his recusal on The Farm application.

Board takes eight-minute break in advance of next application

**e. Completeness Review for PUD-2020-01 - Subdivision/Planned Unit Development (Village) — Schooner Head Housing**  
**Project Location:** Tax Map 253, Lot 011 on Schooner Head Road; encompassing a total of ±40.24 acres, according to town tax records. The

Completeness Review for PUD-2020-01, Schooner Head Housing

subject land is all in the Village Residential zoning district.

**Applicant:** Developers Collaborative

**Owner:** The Jackson Laboratory

**Application:** To develop a 44-unit residential subdivision in five buildings (one three-story, four two-story) on Schooner Head Road.

Mr. Fitzpatrick asked to be recused because The Jackson Laboratory is his employer, and also because he would be co-presenting with others tonight on this application. Vice-chair Cough moved to recuse Mr. Fitzpatrick, as he is employed by the applicant (and will be presenting on its behalf) for this project. Ms. Brooks seconded the motion, and it then carried unanimously (4-0) on a roll-call vote (Mr. Fitzpatrick did not vote on the motion). The board's voting membership was reduced to four members.

Katy Longley, executive vice president and chief operating officer of The Jackson Laboratory (JAX), introduced the project and began by noting the lab's need for year-round workforce housing. She said many of the lab's employees can't afford to live on MDI while others do not drive. She said the 44 units are a mix of one-, two- and three-bedroom apartments and that the complete vision for the project is 100 units. She also noted the lab has cut back on some capital expenses in these trying times, but that it remains committed to this project. "We think that this project really helps complement Bar Harbor's multi-pronged strategy to address the housing crisis on MDI, and we're proud to be part of the solution, not the problem," she said.

Engineer Sarah Nicholson from Woodard & Curran, representing JAX, noted that the agenda lists Developers Collaborative as the applicant but that the lab and the collaborative are joint applicants, as noted on the application. Mr. Fitzpatrick, representing the lab, said there are "significant modifications of standards to allow this project to go through." He said the lab sees them as "doable," however, and noted that Section 125-64 "gives the Planning Board the ability to modify standards as necessary" to address particular site characteristics or other factors.

Mr. Fitzpatrick said the first requested modification involved Section 125-69 S. (6) (b), which he noted is the "requirement for the minimum number of affordable units in a PUD-V to be established as 20 percent of the base development density." He said approximately 80 single-family homes, without public sewers, could be built on the 37-acre site through the normal subdivision process. With sewer service, he said that number could double to 160. He said with sewer service the required affordable units would be 32 units. Noting the lab is looking to build "somewhere in the neighborhood of 100 units," Fitzpatrick said, which is "less than two-thirds of what we could develop that site for under our base developmental density, much less any density bonuses that we could get" for other additional services they could provide.

J. Fitzpatrick asks to to be recused

Board votes to recuse J. Fitzpatrick, as applicant is his employer, 4-0

Katy Longley from JAX present to introduce project, explains the lab's interest in it

Sarah Nicholson from Woodard & Curran present

Mention of modification of standards

J. Fitzpatrick reviews modifications of standards requested by the applicant

Mr. Fitzpatrick said the lab is not trying to eliminate affordability, but is instead proposing to deliver “20 percent of whatever we build as affordable.” If the lab builds 50 units total, 10 would be affordable; if 100 were built, 20 would be affordable (as defined in ordinance). Mr. Fitzpatrick said the lab believes that is “consistent with the spirit of the ordinance.” He said Section 125-69 M. (6) (b) under PUD-O contemplates something similar, in that developments that stay under the base development density are not required to provide affordable units. He said the lab sees that as fitting in with the overall intent of affordable housing provisions in the Land Use Ordinance.

**J. Fitzpatrick explains lab’s approach to affordability and how it relates to the LUO**

The lab is also asking for a modification of the standard in Section 125-69 R. (3) (a), said Mr. Fitzpatrick. The project is proposed as workforce housing for the lab, and not a public housing project. He said while that does not directly or immediately create new housing options for people who work elsewhere, that it could indirectly have that effect as lab workers move out of rentals in town and into this proposed new housing. “Other opportunities in Bar Harbor will open up,” he said. Mr. Fitzpatrick noted that both Island Housing Trust and Bar Harbor Housing Authority wrote letters supporting modification of standards in order to help advance the project. He, too, outlined how this proposal fits in with town land use documents and plans.

**J. Fitzpatrick explains lab’s request to offer housing to lab employees only, not the general public**

Ms. Nicholson outlined the project further, noting that it includes a 68-space parking lot and open recreation space. The parking lot would not be directly abutting the homes, said Nicholson, although there would be a travel area wide enough for residents to drive to their doors to drop off groceries or park a moving van. She clarified for the record that the entire property is 36.915 acres in size, made up of two individual tax lots (one larger and one smaller).

**S. Nicholson speaks to parking lot and clarifies lot size**

Ms. Nicholson said the lab intends to have the project served by town sewer and water. A water line exists on Schooner Head Road currently and can be connected to the project. She said the plan is to upgrade the existing water line in Schooner Head Road, but noted that is not required for the project to go forward; the lab also intends to install a sewer line on Schooner Head Road (one does not exist there presently) which would connect to a sewer manhole at the corner of Schooner Head Road and Route 3. Stormwater would be managed via two best management practices, one being roof runoff filters and the other being underdrain soil filters for the paved areas. She showed the things she had been talking about by sharing a site plan on her screen. All five buildings meet the height requirements of the zone, she noted, which is 40 feet.

**Discussion of water and sewer lines and also stormwater management plan**

Chair St. Germain invited questions from the board. He said he believed the board had quite a bit of ground to cover on modification of standards. On the modification of standards question, Vice-chair Cough said the appropriate time to discuss that would be when there is a public hearing. He said knowing about them ahead of time, though, is helpful. He said he didn’t think the board should be weighing-in on the matter at the present time. He said there was no precedent.

**J. Cough: time to talk about request to modify standards is at public hearing, not now**

Chair St. Germain said the board could turn its attention to waiver requests. Mr. Eleftheriou asked a preliminary question about whether the board needed any specific legal documents relating to the PUD proposal (such as proposed deed restrictions, etc.). CEO Chamberlain said she did not know that it was necessarily a completeness item, but that the earlier the board and staff have them for review the better it is. She advised not to waive those documents.

**Question about legal documents**

Mr. Eleftheriou asked whether the project would need a site location permit from DEP. Ms. Nicholson said yes, but added "it will not be in hand by the time we go to public hearing." She mentioned the exemption that JAX is eligible for, and how that relates to this project. She and Mr. Eleftheriou engaged in conversation.

**Question about site location permit**

Planning Director Gagnon advised the board to not waive the site permit requirement and added she thought the applicant "should demonstrate that they at least have applied for the permit at one point before the final approval." Ms. Nicholson said the applicant "will certainly" have applied for the site location permit before the next scheduled meeting (June 3), but added that to have it in by May 14 (the submission deadline) would be "pretty soon." Vice-chair Cough asked how that was consistent with providing information well before the public hearing. He said he didn't have a problem if the board had done that before.

**Further discussion of SLODA (Site Location of Development Act) permit**

Planning Director Gagnon said that it's "a very exhaustive process" to apply for a site location of development (SLODA) permit. "The thing with a SLODA is that it is a big undertaking," she said. She said if the applicant does not get it or has to modify something, they would have to come back to the Planning Board for a modification.

Mr. Eleftheriou went through the list of waiver requests and noted where he thought changes should be made. He asked specifically about traffic and what the lab would be providing. Ms. Nicholson said a review will be done by a traffic engineer and will be given to the board. She explained what would include.

**B. Eleftheriou asks a question about traffic**

Chair St. Germain asked about the proposed relocation of a portion of the Schooner Head Trail and whether it should be included in Exhibit 12 (the applicant was asking for a waiver). Mr. Fitzpatrick recounted the history of the agreement between JAX and the Friends of Acadia to construct trails across the JAX property as a right, not an easement. He said the right dates to 2007, and said, "We went through many painstaking discussions because we knew we were going to develop this property someday, somehow, somewhere that it would impact that trail," said Fitzpatrick. "That day is today." Mr. Fitzpatrick said the lab has met with FOA and ANP and informed them both in writing the lab intends to develop over the site of the current trail and said they plan to work with them to establish alternate locations. He said the lab wants to continue the ability for people to walk through and enjoy the area. He said there are two or three options. "We'll mutually select where the options are going to go," he said.

**Discussion about Schooner Head Trail and relocation**

Mr. Fitzpatrick said one of the options would “significantly change the character” of the trail, which he said at present is essentially a “sidewalk in the woods.” The trail might go further up on the ridge, while another would redirect pedestrians toward Schooner Head Road. He said he did not know that the trail was required to be shown, as it is a voluntary agreement. Mr. Fitzpatrick and Ms. Nicholson said the agreement is not tied to a specific location on the property. “We intend to continue with the license and the right,” Mr. Fitzpatrick said. “We want them to use it, we just don’t know where it’s going to be.”

**Further discussion of Schooner Head Trail relocation**

**Mr. Eleftheriou made a motion to grant the waivers requested by the applicant and listed in the checklist with the exceptions of item 5B, items 7A and D, item 7.1 E (DOT), item 9 BB (hydrants) — those items are to be excluded from the original waiver request. Mr. Eleftheriou also moved to include, on page 8 of the submission, to include that as waivers, which include title and interest, legal documents, design plans and design approval by state and local agencies as well as waivers, as they will not unduly restrict the review process as these are inapplicable, unnecessary or inappropriate for complete review. The motion was seconded by Vice-chair Cough. There was no further discussion. The motion then carried unanimously (4-0) on a roll-call vote.**

**Grant the waivers as requested by the applicant, with the exception of items 5B, 7A & D, 7.1 E, and 9BB, as well as items on page 8 of submission:  
APPROVED, 4-0**

Chair St. Germain said that although public comments are optional at completeness review, the board would take comments. Assistant Planner Fuller read the number to call for public comment again. The public comment period was opened at 7:32 PM.

**Public comment period is opened**

Dean Read commented that the Planned Unit Development “is a very specific, complicated arrangement to allow more dense housing.” He said he believes landowners have the right to do what the ordinances allow them to do, but said he did not support the idea of waivers [modifications] that would allow an applicant to do what the ordinance doesn’t already specifically allow. He said that would “obfuscate the purpose of a planned unit development in the first place.” He said he was opposed to weakening any requirement of a Planned Unit Development. Mr. Read said he had already written a letter to the board regarding traffic. There were no further comments and the public comment period was closed at 7:34 PM.

**Dean Read speaks against the idea of modification of standards, notes he already wrote to the board RE: traffic**

Chair St. Germain said the board needed to determine the application’s completeness and decide whether to schedule it for a public hearing. He said the request for modification of standards “merits at least some conversation,” although it should be “limited,” as it did not necessarily fall under the umbrella of completeness review, as Vice-chair Cough noted earlier.

**Chair St. Germain says board should talk some about modification of standards**

Mr. Eleftheriou said his recollection of the last PUD approval process was that certain legal documents were left for staff to review (that the documents were not



finalized before Planning Board approval. Chair St. Germain recalled attorneys working together to sort out language questions after approval. Mr. Eleftheriou said he just wanted to give the applicant some guidance on how to proceed for the next meeting. Discussion among board members and the applicant ensued.

**Question about involving attorneys**

Vice-chair Cough asked whether the board was missing a “mild checklist of Planned Unit Development requirements over and above the normal checklist.” He agreed with Chair St. Germain’s recollection. He said he didn’t want to miss anything and in so doing do a disservice to the applicant. He said he wanted to make sure the board gave the applicant proper guidance. Planning Director Gagnon noted that the Planned Unit Development (PUD) requirements are under standards and not under submission requirements.

**Discussion about PUD-specific requirements**

Ms. Nicholson asked what other specific submissions the board saw as required, and would they be reviewed by the board prior to approval or by lawyers after the fact. She said she wanted to be sure she had everything she needed to have I by May 14 “in order to be able to have an effective public hearing on June 3.”

Vice-chair Cough said he was not well-versed enough in PUD requirements to be able to answer that. He said he thought it would be helpful for staff to meet with the applicant after the meeting. He said he did not necessarily think that the board needed the documents being discussed prior to the submittal date for a public hearing, agreeing with Planning Director Gagnon’s position stated above. Mr. Fitzpatrick said his recollection with the previous PUD approval was that the board made approval conditional on receipt of certain documents that both the town’s attorney and the applicant’s attorney had read over and agreed to.

**More discussion of what needs to be submitted and when**

At the request of Vice-chair Cough, Chair St. Germain read staff comments regarding the completeness of the application. There were seven bullet points:

- Capacity statements from water, sewer, public works (stormwater, site distance and fire department).
- The applicant needs to apply for an SLODA permit, taking note of the proposed sequencing of developments in relation to permits that the applicant is proposing (per page 9 of the application).
- The application is missing a traffic generation analysis.
- The plan has to be recorded at the Registry of Deeds and signed by a land surveyor.
- Per page 8 of the application, the applicant is seeking more waivers to include title and interest, legal documents, design plans and design approval by state and local agencies.
- The applicant did address bullet point 6 just recently, to determine the condition of the sewer basin and line on Schooner Head Road, said Chair St. Germain. He noted a recommendation that that be a condition of approval at the compliance meeting
- Applicant is seeking a modification of standards, as explained on page 3 of the application, percentage of affordable units and selection criteria.

**Review of staff comments regarding completeness of the application**

Vice-chair Cough said the affordable housing questions are modifications of standards and not completeness and that they should be left out of a motion. Citing the two issues in the last bullet point, he said he would move everything but those two items and find the application incomplete. Chair St. Germain noted staff had prepared a proposed motion which he said Vice-chair Cough might want to substitute.

Discussion of what should be addressed in motion for completeness

**Vice-chair Cough moved to find application PUD-2020-01 — Schooner Head Housing incomplete per the Bar Harbor Land Use Ordinance Section 125-66 pending receipt of capacity statements by May 14, 2020 from water, sewer, public works, and fire departments, traffic generation information, the plat plan to be stamped by a public land surveyor and demonstration that the application has applied for the SLODA permit to be provided at the compliance meeting and schedule a public hearing on June 3, 2020. Ms. Brooks seconded. The motion carried unanimously (4-0) on a roll-call vote.**

**PUD-2020-01 — Schooner Head Housing: INCOMPLETE (4-0), set for public hearing on June 3, 2020, pending receipt of missing items as specified in the motion by May 14, 2020**

Chair St. Germain then moved into a discussion on modification of standards. Mr. Fitzpatrick said the base development density of 160 units would require 32 affordable units, whether the lab builds 10 units or 100 units on day one. He said they were looking at a scaled approach: building 44 units on day one and having nine of those be affordable. If the total goes to 100, affordable would go to 20. With 150, it would go up to 30. Ms. Brooks asked if the lab would ever build 32 affordable units. Mr. Fitzpatrick said it would not, but that it would instead deliver 20 percent of the total units as affordable out of whatever total it built. He said the lab saw that as being consistent with the intent of the ordinance. He noted that PUD-O (which he acknowledged is designed for rural areas) has no minimum requirement for affordable units unless base development density is exceeded. He reiterated that the lab's target of 100 units total represents less than 2/3 of the number of single-family homes that could hypothetically be built on the parcel (representing base development density).

Discussion on request for modification of standards

Mr. Eleftheriou said he saw the lab's proposal as aligning, in spirit, with the intent of the PUD concept. He said he was fine with 20 percent of the total units.

Ms. Brooks said that seemed to contradict the idea of base development density in general. Mr. Eleftheriou reiterated that it seemed to meet the spirit of the PUD. Mr. Fitzpatrick noted that the base development density is 160, and that because the applicant could double that, the lab could hypothetically do 320 units. Chair St. Germain noted it would require more affordable units though, and Mr. Fitzpatrick agreed. Ms. Nicholson noted 32 out of 44 units equals 72.7 percent.

Discussion of base development density

Discussion continued. Chair St. Germain spoke about how different factors were related: base development density to the number of affordable units, affordable units defined in Section 125-69 R., and how those units then have to be marketed in a certain way while this applicant is seeking exclusivity for its employees. He

Discussion of affordable units and exclusivity

elaborated on this point. Noting the lab's plans to move mouse production work to Ellsworth, he wondered who would be living in these proposed new units and whether they would meet the income guidelines for affordability in the LUO. He said that is another modification of standards that is being asked for (the definition of affordability).

"Affordability is defined on income, and if the lab intends on having the higher-paid jobs here in Bar Harbor that's great," said Chair St. Germain. "But it is another area where it is in conflict with the land use ordinance and would require a modification there, as well as the exclusivity factor." Ms. Brooks said she got what Chair St. Germain was saying, and said in her opinion this application as presented is not adhering to the PUD-V standards in the ordinance. She said she had raised this concern previously and did not see that it had been addressed other than the request for modifications.

Ms. Longley gave an overview of the lab's employment situation, noting that most of the jobs in Ellsworth will be newly created positions. She said not many people will be transferred from Bar Harbor, and that there would still be many employees here who would meet the criteria for the affordable units. She said the lab envisions a mix of administrative professionals and front-line workers in the new housing units. She said the lab wants a mix of employees to live there.

Mr. Fitzpatrick said the lab is not seeking any modification whatsoever to the affordability covenant itself, explaining how it works and stating, "We want to comply by that for the 20 percent off affordable units that we're providing." He said the lab is not asking for a modification of standards for those people that live there to meet the means test, explaining what that involves as well. "We're not asking for any modification whatsoever for who qualifies to live there or how much rent we're able to charge them," he said.

Ms. Brooks said she did not see how Mr. Fitzpatrick's explanation addressed the issues she had raised. "We're proposing to designate as affordable 20 percent of whatever we end up building," said Fitzpatrick, which would be 9 units in the first phase with 44 units. Vice-chair Cough said the number of affordable units would be at 20 percent as each proposed phase was constructed and came online.

Mr. Fitzpatrick spoke about PUD-O versus PUD-V, noting both are options in the Village Residential district. He said because the lot in question is not served by public sewer, the lab could go through the PUD-O process and put in one or more septic systems for 160 units and not have to make any of them affordable or give any preferential consideration to town employees or residents. He said the lab wanted to go PUD-V to meet the town's comprehensive plan and to meet the town's goals of putting high-density, residential development in areas served by sewer and water. He said the ordinance was proving difficult, however, and said if seeking the modifications was going to be problematic the lab would go the PUD-O route instead "and put in a septic field for 160 units even though we

**T. St. Germain and E. Brooks raise concerns about application not complying with the Land Use Ordinance**

**K. Longley explains the lab's approach to meeting need for housing**

**J. Fitzpatrick speaks to issue of affordability and how JAX is treating it in this application**

**More discussion of affordability**

**Discussion on PUD-V vs. PUD-O**

have sewer 250 feet away.” Mr. Fitzpatrick said the lab wants the modifications of standards in order to take advantage of the town’s infrastructure. He said again that PUD-O would not require the lab to make a single unit affordable (as defined), but added, “We’d rather not go that route.”

**J. Fitzpatrick: Lab prefers to avoid the PUD-O route**

At 8:17 PM Chair St. Germain returned to the meeting after a brief absence due to technical issues with his internet connections. He asked Mr. Fitzpatrick if the lab had considered doing a traditional subdivision with multifamily I dwelling units by subdividing the lot. Mr. Fitzpatrick said that seemed to circumvent the larger goal of building affordable housing for the lab’s employees. He said the way to make housing affordable was to cluster it together with shared walls, roofs, services, and more. “We’re not trying to build a subdivision to sell off lots and profit from the subdivision process,” he said. Mr. Fitzpatrick said while this approach was perhaps not the most compliant to the letter of the ordinance, the lab saw it as the most compliant with the spirit and intent of the ordinance.

**Further discussion of the lab’s approach with this application**

Chair St. Germain said he agreed with Mr. Fitzpatrick in the sense that “the PUD-V standards as they’re written in the Land Use Ordinance really confront the developer with some really unenviable choices. It’s really more of a penalty than an encouragement, but it’s there and we have to deal with it.”

**T. St. Germain agrees with lab that PUD-V has issues**

Mr. Eleftheriou said he agreed that the lab’s proposal met the spirit of the ordinance. He noted that site characteristics make much of the site undevelopable. Ms. Brooks asked for clarification regarding the proposal to only offer this to lab employees despite the ordinance requirement that it be not just one entity but the entire town of Bar Harbor. Mr. Fitzpatrick said the lab would like to eliminate the preferential selection because the lab is constructing the building and subsidizing it “pretty significantly” to keep the rents down. Ms. Brooks took issue with this approach, because she said it would set a precedent as a way for businesses or organizations to do workforce housing just for their entity, which she said runs contrary to what the ordinance requires at present.

**B. Eleftheriou: lab proposal meets spirit of LUO**

**Discussion on preferential selection of tenants**

Mr. Fitzpatrick said it would be desirable for employers to build workforce housing and said again that if the lab applied under PUD-O the affordability requirements wouldn’t apply. He said the lab went PUD-V “to take advantage of the town’s infrastructure and connect to it,” later adding, “Without what I would consider to be ruining the land putting in a 100-unit septic field.” He said the lab was trying to be transparent by going with PUD-V.

**More discussion of PUD-O vs. PUD-V**

Chair St. Germain observed that the Planning Board had “just dealt with an applicant who was held, very strictly, by the appeals process that they had to — *had to* — comply with all of the provisions of 125-69 S. as well as the way they relate to 125-69 R.”

**Reference to recent PUD application before board, on remand from BOA**

He referred to both 125-69 M. (5) and S. (5), both of which read, “The Planning Board may consider the allowance of multifamily dwellings not otherwise

allowed in the underlying district when the construction of multifamily dwelling structures will result in the creation and/or retention of larger buffers, open space and recreation areas that might not be possible otherwise in the development, reduce negative impacts on the environment and will be consistent with the purpose and intent of this provision.” Chair St. Germain said he was “sympathetic” to the applicant’s reasoning, but wanted to discuss it more.

**T. St. Germain reads aloud text of 125-69 M. (5), which is the same as 125-69 S. (5)**

Mr. Eleftheriou said he would like to discuss the proposal more. He noted sewer was not provided on Schooner Head Road, and that while PUD-O and PUD-V were each written for certain areas sometimes there is a gray area in between. He said the lab had “good reasoning” but said the board should give it more thought.

**Call for further discussion and review**

Chair St. Germain asked if the applicant had questions for the board, and Ms. Longley asked what additional information it would be helpful for the board to have. Chair St. Germain said it was a difficult question to answer. Mr. Eleftheriou said the board is good about applying the letter of the law and does not take modifications lightly

**JAX asks what else it can give for info.**

Vice-chair Cough said it would be good to take a pause and think about it more. He said he wanted to take a closer look at PUD-O and then go back and look at PUD-O. He offered a hypothetical situation where a developer had 30 acres and could only put ten lots on it because of the terrain but was granted a modification of standard in grading that allowed for 30 lots instead. He said that could be “a great tool to have,” but said it “just can’t happen.” He said what the lab is proposing is a substantial change, and without weighing in on whether he supported it he said granting it would make it hard to turn down anyone else in the future. He said Mr. Fitzpatrick made a compelling case about adhering to the comprehensive plan, but said others could, too.

**J. Cough offers his thoughts and a hypothetical situation for comparison purposes**

## **VIII. OTHER BUSINESS**

### **a. Vacation rentals update from Planning Director**

Planning Director Gagnon referred to a workshop held the night before (with the Planning Board and the Town Council), and that there had been some guidance as a result of that. She said staff was looking at the deadline to possibly get the proposed amendment on the November ballot, and would be discussing it soon with Town Manager Cornell Knight. Chair St. Germain said that the Town Council decided to put the citizen’s initiative vacation rentals proposal on the ballot, which will be voted on in July. That will affect the Planning Board’s work going forward, he said.

**Planning Director Gagnon gives update on vacation rental proposal, an when it might go to voters**

## **IX. BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA**

None.

**No comments for next agenda**

**X. REVIEW OF PENDING PLANNING BOARD PROJECTS**

None.

No review

**XI. ADJOURNMENT**

At 8:37 PM, Vice-chair Cough moved to adjourn the meeting and Ms. Brooks seconded the motion. It then carried unanimously (5-0).

Meeting adjourned  
at 8:37 PM, 5-0

Minutes approved by the Bar Harbor Planning Board on July 8, 2020:

EEF

7.15.20  
Date

  
Basil Eleftheriou Jr., Secretary, Bar Harbor Planning Board