

Meeting Minutes
Bar Harbor Planning Board
Wednesday, May 4, 2022 — 4:00 PM
Bar Harbor Council Chambers — Municipal Building — 93 Cottage Street

I. CALL TO ORDER

Chairperson St. Germain called the meeting to order at 4:00 PM. Planning Board members present were Chairperson Tom St. Germain, Vice-chairperson Joe Cough, Secretary Millard Dority, and members Ruth Eveland, Earl Brechlin, Elissa Chesler and Zachary Soares.

Town staff members present were Planning Director Michele Gagnon and Deputy Code Enforcement Officer Mike Gurtler.

Others present were applicants and applicant representatives including Michael and Fayelle Anderson, Chris Byers, Meryl Reed, Steve Knapp, and Rebecca Stanley.

II. ADOPTION OF THE AGENDA

Secretary Dority moved to adopt the agenda. Ms. Eveland seconded the motion.

Vice-chairperson Cough noted that The Jackson Laboratory had indicated in emails prior to the meeting that they wished to remove their application from this particular agenda.

Secretary Dority amended his motion to reflect that change. Ms. Eveland amended her second. The motion then carried without opposition, 6-0, on a roll-call vote (Ms. Chesler did not vote, in keeping with past practice due to her employment by The Jackson Laboratory).

III. EXCUSED ABSENCES

As all members were present there were no absences to excuse.

IV. PUBLIC COMMENT PERIOD

The Board allows up to 15 minutes of public comment on any subject not on the agenda nor on a pending application before the board, with a maximum of three minutes per person.

Chairperson St. Germain opened the public comment period at 4:04 PM. No one came forward to speak, and the Board moved ahead with the rest of the agenda.

V. APPROVAL OF MINUTES

- a. April 6, 2022
- b. April 19, 2022

Vice-chairperson Cough moved to approve the minutes. Mr. Brechlin seconded the motion. Mr. Dority noted that he was not present for the April 19 meeting, but said he had done his due diligence and watched the recording of the meeting and reviewed the prepared minutes. He said he was open to feedback from the Board. Vice-chairperson Cough said he believed the minutes needed to be taken separately, and it was clarified that the motion on the floor was specific to the April 6 minutes. **The motion then carried unanimously, 7-0, on a roll-call vote.**

Vice-chairperson Cough moved to approve the minutes of April 19, 2022. Ms. Eveland seconded the motion. The motion then carried unanimously, 7-0, on a roll-call vote.

VI. REGULAR BUSINESS

a. Public Hearing, and Completeness and Compliance Review for Subdivision SD-2022-04 – Lamb Subdivision – Anderson Lot Line

Applicant/Owner: Michael and Fayelle Anderson, 25 Manteca Drive, Bar Harbor, ME 04609

Application: The project consists of the modification of the Lamb Subdivision. The applicant seeks to divide Tax Map 206 Lot 14 (25 Manteca Drive) into two lots: a 12.3-acre lot with three existing dwelling units and a 2.2-acre lot with one existing dwelling unit.

Project Location: 25 Manteca Drive (Tax Map 206, Lot 14), encompassing a total 14.5± acres.

Districts: Shoreland Limited Residential and Salisbury Cove Residential

Secretary Dority asked to be allowed to adjudicate the application, despite having been absent, as he had watched the video and reviewed the minutes. Ms. Eveland said she saw that request as being both reasonable and consistent with past practice. Vice-chairperson Cough said he did not think formal action by the Board on Secretary Dority's request was necessary. Secretary Dority assured the applicant that he had reviewed the available materials.

Michael and Fayelle Anderson were present. Ms. Anderson said she trusted that Secretary Dority had done his due diligence with regards to the application. A friendly discussion on the proper pronunciation of Manteca ensued. The Andersons introduced themselves and brought the Board up to speed. The deeded right-of-way is done, they said. The consent agreement is in process and on the May 17, 2022 Town Council agenda. The Town Council had not yet addressed the matter.

Chairperson St. Germain asked what the Board's options were considering the outstanding consent agreement. The Board has 45 days to sign the plan, said Planning Director Gagnon, from when the decision is signed. She advised the Board not to sign the plan before the consent agreement was in place, however. Planning Director Gagnon said she had consulted with Code Enforcement Officer Chamberlain on the matter, as well.

Secretary Dority said he was conflicted. Finding an application complete when the Code Enforcement Officer has found a violation would be a "big leap," he said. He said he was not

concerned about this particular application, but rather the precedent it might set for other applications in the future. He said he wanted to help expedite the process for the Andersons.

Planning Director Gagnon said one possibility would be for the Board to hold the public hearing and wrap up its completeness review without making a final motion, and then hold a special meeting once a resolution is reached (in the form of a consent agreement with the town). Special meetings add a lot of work and should not be taken lightly, she added, but can be appropriate in certain cases. She said the town had sometimes done the same in similar cases in the past.

Chairperson St. Germain recalled a previous instance in which the Planning Board had dealt with a similar issue and the Town Council, as part of the consent agreement process, had instructed that applicant to essentially “go make yourselves right with the Planning Board.” Secretary Dority was heartened to hear it would not be precedent-setting. The Planning Board is subject to the Town Council’s decisions, said Vice-chairperson Cough in agreement. Chairperson St. Germain and others discussed what the process could look like going forward, and the question of whether tabling or continuing the application would be the more appropriate action.

This violation dates back more than two decades said Planning Director Gagnon. The applicant has received additional town-issued permits since then and did not know about this violation, she said, adding that when the Andersons learned there was a violation they began work to resolve it. Planning Director Gagnon said she believed there were enough guardrails in place to safeguard the process and the Planning Board.

Ms. Eveland said she was inclined to support the town staff’s position. The expectation is that the violation would be addressed to the satisfaction of the CEO prior to the Planning Board signing off on anything, said Ms. Eveland. The resolution of the violation is a procedural step that needs to take place, she continued, not a substantive issue with the application itself.

There was some discussion on the language in the LUO, Article X, §125-101, and of the proper way to proceed. Planning Director Gagnon gave an overview of this particular application and asked the Planning Board to keep the circumstances in context. Vice-chairperson Cough offered his thoughts on what was possible from a procedural standpoint. Ms. Chesler called the Board’s attention to §125-66 B. (2) in the Land Use Ordinance. Chairperson St. Germain read from §125-101 A. (2). It was noted that the violation was not recognized at the time the applicants submitted their application. Vice-chairperson Cough asked questions about proper process moving forward.

Ms. Chesler noted that the Planning Board does not yet have a letter from appropriate municipal officials (i.e., the CEO) that the applicants are not in violation. She felt the Planning Board could not find the application complete without that letter under §125-66 B. (2), which as she read aloud earlier requires that the applicants not be in violation of the Land Use Ordinance, she said.

Planning Director Gagnon offered a possible course of action. She noted submission requirements can be waived if they are not necessary for the Planning Board to review or understand a project and will not impact the outcome. Vice-chairperson Cough said he understood what she was saying but felt that, to Ms. Chesler's point, it would open a door the Planning Board doesn't want to go through. It would mean any future applicant with a known violation could then put forward a request for a waiver of that submission requirement with an application. The Planning Board would then have to hear that because precedent would have been set here. He said the Board should seek to avoid setting a precedent it might later regret.

Chairperson St. Germain suggested the Planning Board could find the application incomplete, schedule it for a public hearing on June 1 and allow the Town Council to come up with a consent agreement which would become part of the record, in which case the violation would no longer be considered a violation. Other Planning Board members expressed support for this idea.

There was further discussion on scheduling, given public notice deadlines. Those interested in the public hearing are presumably in attendance already, said Planning Director Gagnon. She said the Planning Board could continue this application until the June 1 meeting. That would preclude her having to re-notice the item. Chairperson St. Germain asked for input from others.

The Planning Board often finds applications incomplete pending receipt of certain items, making it obvious those must be met before final approval, said Mr. Brechlin. He acknowledged this has different prominence given the violation. Chairperson St. Germain agreed, noting the Planning Board recently approved an application that was missing a capacity letter from the Public Works Department. That is a bit different, said Planning Director Gagnon. Capacity letters aren't under the Planning Department's direct control, she said, and this is a violation rather than a letter.

Ms. Eveland said she understood that there was a qualitative difference, but pointed back to what Planning Director Gagnon said at the beginning. The issue in this case is a longstanding violation that has not previously caused an issue. The Planning Board would not sign plans until it's fixed. Secretary Dority and Vice-chairperson Cough both voiced their concerns about precedent issues.

As discussion continued, Chairperson St. Germain asked what the Board felt comfortable doing. Secretary Dority asked how an altered timeframe would affect the applicant. In a perfect world, the content agreement would be approved on May 17, said Mr. Anderson. The closing could be moved forward several days to allow for legal details to be worked out, the applicants said.

Planning Director Gagnon read from §125-63, noting that the Planning Board has the ability to "condition such a wavier [of submission requirements] on the applicant's compliance with alternative requirements." She asked whether it would be fair to say whether the applicant had provided an alternative submission on the matter of a letter of compliance vs. notice of violation.

All the information is there, she said. The purpose of submission requirements, she said, is for the Planning Board to be able to hold a review and judge if the application meets the standards.

Mr. Brechlin said he did not like the idea of granting a waiver for what he saw as an important requirement. He said he would prefer to find the application complete pending receipt of a letter of compliance. Vice-chairperson Cough proposed a hypothetical situation in which the Planning Board might issue a subdivision permit, which then began construction before any permit(s) was issued. After the sketch plan and before completeness, he said, the Code Enforcement Officer would then send a letter indicating the applicant is in violation because road construction has begun. What would the Board do if it got a violation letter then? He felt it would be very upset.

The Planning Board is not a court, said Ms. Chesler, in terms of setting precedent. She asked if having a letter of no violation, at this point in the process, would be necessary for a complete review. The Planning Board knows how this will likely percolate through, she said. She said she did not feel the letter was necessary for this particular violation in this particular circumstance. "I'm really uncomfortable waiving the requirement that there be no violations," she said. She said not having a no-violation letter here did not impact her ability to review the application.

Chairperson St. Germain said he was skeptical the Town Council would resolve the issue on May 17. Chairperson St. Germain said Ms. Chesler's point was a good one. He asked Vice-chairperson Cough and Ms. Eveland, both former Town Council members, if consent agreements are typically negotiated at meetings. Ms. Eveland said she thought she recalled certain instances (in relatively simple matters) where language drafted by lawyers was brought forward that the Town Council could then approve "without having a secondary process." It typically doesn't get done that day, said Vice-chairperson Cough, but could still be done fairly quickly.

Secretary Dority moved that the Planning Board find application SD-2022-04 — Lamb Subdivision - Anderson Lot Line — incomplete, with the only outstanding issue, a letter from the Code Enforcement Officer that the applicant is in compliance with the Land Use Ordinance, and continue the meeting on June 1, 2022, when the Board will hold a completeness [review] and public hearing. Vice-chairperson Cough seconded the motion.

Planning Director Gagnon suggested replacing "the meeting" with "review of this application." Secretary Dority amended his motion. Vice-chairperson Cough amended his second. Discussion followed. Ms. Eveland said it wasn't her preferred method but that she would vote in favor of the motion. Mr. Brechlin agreed. Chairperson St. Germain said he thought it was best to go this route, and not proceed until June 1, given that there is an outstanding violation that exists. Ms. Anderson asked whether, if they received a decision from the Town Council before June 1, this could be moved up somehow. Discussion followed. Planning Director Gagnon explained the two options before the Planning Board. The best option at this

point is to move forward with the June 1 date, she said. Ms. Chesler said she wished it could go faster but it puts a lot of things at risk, in terms of meeting deadlines, so pushing it forward to June is the best way to go. This is cleaner and likely the safest, said Planning Director Gagnon. This gives the applicant time in case the Town Council does not resolve it on May 17, she added.

The motion, as amended, then carried unanimously (7-0), on a roll-call vote.

Chairperson St. Germain declared a five-minute recess to prepare for the next applicant, as there were some technology requirements that needed to be addressed.

b. Completeness Review for Site Plan SP-2022-02 — Bar Harbor Community Solar
Applicant/Owner: Bar Harbor Community Solar, LLC, 6 Balsam Circle, New Harbor, Maine 04554

Application: To develop a large-scale (10.5 acres) ground-mounted solar energy system providing approximately 1.99 megawatts of power to the electrical grid.

Project Location: Off of Knox Road (Tax Map 220, Lot 67), encompassing a total of ±57.5 acres, according to town tax records

Districts: Town Hill Rural District, Shoreland Limited Residential and Resource Protection

Chris Byers, Meryl Reed, Rebecca Stanley and Steve Knapp were present representing the applicant. Mr. Byers said the applicant would give an overview of what was in the application, and also focus on the Land Use Ordinance's shoreland zoning standards and solar energy standards. He noted a site visit was held on April 28, and thanked the Planning Board for taking time to do that. He said he was impressed at the number of residents who showed up, as well.

Mr. Byers gave an overview of the project, including a PowerPoint presentation. The purpose of the project is to provide discounted power to Mainers, he said. He gave an overview of the legislative history that allowed for projects like this. The state's community solar program is now unlimited in terms of customers, a change from past practice, said Mr. Byers. Projects are capped at 2 megawatts. This project could provide power for the equivalent of about 300 homes, he said.

Bar Harbor's Climate Action Plan indicated a town (municipal government) load of 1,900 megawatt hours. That would be about 75% of this project's capacity. This could power the municipal facilities of the town with 25% left over for other businesses. That is not necessarily the plan, said Mr. Byers, but it is a helpful thing to keep in mind in terms of scale.

The project was initially 15 acres and has been reduced by 5 acres, in large part because of a better understanding of the town's shoreland zoning standards. The previous plan conformed to Maine Department of Environmental Protection's shoreland zoning, which is what the applicant is familiar with, said Mr. Byers. Bar Harbor's shoreland zoning ordinance is "above and beyond" what occurs in most of the state. The project was also amended due to feedback from abutters.

One abutter, David Ouellette, requested a gate at one location where there is a deeded right-of-way to the project. That has been added, said Mr. Byers, who explained why. Above-ground utility poles have also been shifted to the other (project) side of the access road. The access road is 20 feet wide, rather than 16 feet wide as was initially presented, Mr. Byers continued. A shoreland zoning line has been added to the site plan in order to comply with requirements. He spoke about a 30-foot apron at the entrance off of Knox Road, which was shown more clearly.

There are 21.6 acres of land within shoreland boundaries on the property, said Mr. Byers. The applicant plans to remove 5.2 acres of vegetation in the shoreland zone (which equates to about 24 percent of the overall total). He gave a visual overview of where the vegetation would be removed in shoreland zone areas in order to make room for the solar project. Mr. Byers went on with an overview of shoreland standard §125-68 B. (13) (c). The applicant hired Roger St. Amand of Atlantic Resource Co., a licensed local forester, to assess the property. Mr. Byers said no more than 40% of trees that are 4 inches in diameter or greater, as measured 4.5' above the ground, can be cleared. Mr. St. Amand did not measure every single tree, Mr. Byers explained, but instead surveyed the shoreland zone using standard methodology (which he summarized).

Mr. Knapp and Mr. Byers spoke about basal area. The project will clear 18% of basal area within the shoreland zone, Mr. Byers said, which is under half of the ordinance's allowance of 40%. A discussion on basal area and measurement thereof ensued. Planning Director Gagnon offered insight into basal area, how it is calculated and how it may be used.

Mr. Brechlin asked a question regarding selective versus total cutting and how that applies to the basal area. Mr. Byers said the applicant feels this is selectively clearing that strategic area that is needed for the project. Clarity on what selective cutting means is needed, said Mr. Brechlin.

"We didn't read these as much as timber harvesting practices but rather shoreland zoning practices for the purposes of development when compared against the aggregate size of that property, said Mr. Byers. "In my understanding of the term 'selective cutting'... it doesn't mean selecting big chunks for having cutting and big chunks for not, but that selective cutting is more of a thinning of the trees rather than a total removal," said Mr. Brechlin in response.

Secretary Dority said it seemed clear that the intent of the shoreland standards, when referring to selective cutting, was allowing to thin, not clear cut. The standards, he said, aim to discourage the sort of approach that the applicant is taking with regard to how the cutting could be done. He said the intent of the shoreland vegetation clearing standards is something the Planning Board will have to wrangle with. "It's hard to get my mind around that as being selective... given that it's one big swath," said Secretary Dority. This may be something for an outside/independent expert to review, said Planning Director Gagnon. Ms. Chesler said she did not feel that what the applicant was presenting would meet the definition of selective cutting. Even though this

clearing isn't selective cutting it does seem to meet the needs of the allowed use under the Land Use Ordinance, she said.

Mr. Byers continued. There are approximately 135 trees of 8-inch basal diameter or greater that will remain in the buffer area. He said the applicant's understanding of that requirement in the Land Use Ordinance would be to show trees of such size that would remain on the property.

Secretary Dority asked how many trees at or larger than 8 inches in basal diameter will be removed as part of the project — he said that is usually what the Planning Board wants to know about. He and Mr. Byers discussed the subject. The whole location matters, said Ms. Chesler. She said the Planning Board decided at its last meeting that it wanted to see the location of all 8-inch or larger trees.

Planning Director Gagnon spoke about asking applicants to identify larger-sized trees simply for the sake of identifying them. She referred to the earlier discussion on precedent and asked if the Board would be asking every applicant to do the same. She said she was not saying that the purpose of the request was not important or valid, but rather that it should be thought about. Mr. Brechlin said having an applicant go out and identify every tree over 8 inches seems like "busywork." Vice-chairperson Cough expressed agreement, but noted that it is something the Land Use Ordinance requires and that it is a requirement that needs to be applied equally and evenly. "If we're going to do it we must do it for everybody," he said, and speaking about how the requirement has been addressed in the past and why it is part of the town's requirements.

The Planning Board might want to consider having an expert review of the entire shoreland zoning section of the application, said Planning Director Gagnon. If an objective expert feels that what is presented meets the intent of the ordinance, that might be more valuable and helpful. Mr. Byers said they would do that (identify all of the larger trees) if it were helpful to the Planning Board. Sampling is probably sufficient, versus mapping every tree, said Ms. Chesler. The issue is really understanding the impacts of the project on the site and what restoration might look like.

Mr. Byers moved on to a discussion of the visual aspects of the project. Terrence J. DeWan & Associates of Yarmouth was hired to do a visual analysis. Mr. Byers gave an overview, with photographs, of the viewpoints that were considered in TJD&A's work, in leaf-off condition. Chairperson St. Germain noted that the photographs were in Tab 14 of the April 26, 2022 submission and were not simply in the digital presentation. Photographs were taken from the ground level, said Mr. Byers in response to a question from Deputy Code Enforcement Officer Mike Gurtler, as the applicant did not receive permission for obtaining photographs from above ground level. Mr. Byer spoke about possibly sourcing taller trees for the vegetated buffer in order to provide a more intensive screening program and thereby greater benefits to the abutters.

The applicant is happy to have third-party verification of stormwater and decommissioning plans and estimates done, said Mr. Byers. The Land Use Ordinance requires that an estimate be done by a certified Maine organization, said Secretary Dority. Mr. Byers referred to a conversation the applicant had recently with the Town Council. There isn't much precedent for decommissioning plans for a solar project of this size, said Mr. Byers. The Maine Department of Environmental Protection recently created a decommissioning process and permit for solar projects of this size (greater than 3 acres). The applicant has this permit in hand. Bar Harbor has a different, higher bar than the Maine Department of Environmental Protection, requiring 110 percent and extrapolating for inflation, said Mr. Byers.

That nearly doubles the amount, said Mr. Byers, and a surety will be provided in advance of construction. The Maine Department of Environmental Protection is okay with escrow, but it can be a letter of credit or a bond, but it is ultimately whatever the town wants. Discussion continued. The Town Council was open to what Planning Department staff and the town manager and finance director were comfortable with, said Planning Director Gagnon. Bonds and letters of credit would need to be reviewed and revised within every five years, she added. She said in that case, the document should be filed with DEP and review responsibility placed with that agency.

Ms. Eveland asked whether the solar panel tariff dispute would affect the project. It's a new issue and it is an issue, said Mr. Byers. He explained the situation. Following an imposition of tariffs by the Trump administration, solar manufacturers modified manufacturing practices. The Biden administration felt that was a circumvention of the tariff and has put legal pressure to say maybe there should be a tariff on that as well. That is causing prices to go up for solar panels, said Mr. Byers, and it's definitely an issue. He said some developers are paying the extra costs while others are holding off, depending on resources. It doesn't affect the viability of this project, he said, because this particular project in Bar Harbor isn't being built anytime soon. Utility poles are also really difficult to find, said Mr. Byers, as is electrical conduit. The supply chain is real for us, said Mr. Byers, as it is for everyone else (he spoke of what is called the "solar coaster").

Ms. Chesler asked a question regarding the zoning of abutters. They are in Town Hill Rural, said Mr. Byers, which is the same zoning district as the project. Ms. Chesler asked whether there had been a wildlife survey. A survey had been performed, Mr. Byers said, and Steve Knapp of the Biodiversity Research Institute discussed the survey. He said it is a qualitative, not quantitative survey, of wildlife. There was concern about deer wintering areas in the region, said Ms. Chesler. Those areas are mapped by the state and there are no such areas in the project, said Mr. Knapp. State agencies put the same type of disclaimers (such as "You may want to perform a survey") on all of these types of letters, noted Planning Director Gagnon. This is important, she said, but it is almost like a disclaimer to protect themselves. Mr. Knapp agreed with her comments. Mr. Byers spoke in response to comments made in letters about streams and vernal pools.

Ms. Chesler asked how the project conforms to the town's Comprehensive Plan, for instance under Policy 7H: "encourage renewables while preserving health and wildlife." That should be at least included and assessed in this application, she said. Mr. Byers said the applicant is hopeful that the amount of due diligence and the project's design conforms to that threshold.

We must be careful, said Planning Director Gagnon. The Comprehensive Plan has three types of policies: fiscal, non-regulatory, and regulatory. Regulatory policies are implemented via land use ordinances. When action is taken to amend the Land Use Ordinance, it must be consistent with the Comprehensive Plan. Comprehensive Plans often internally contradict themselves in certain spots, so the question is often "Are you inconsistent with the comp plan?" and not "Are you consistent with the comp plan?". An applicant cannot be held to a certain standard of the Comprehensive Plan, said Planning Director Gagnon — that is not the intent of the comp plan. Planning Director Gagnon went on to explain why she felt this distinction was important. She said what is most important is whether land use amendments are consistent with the comp plan.

The applicant has reviewed the Comprehensive Plan, said Mr. Byers. We're focusing on the LUO standards, he said, but we also have a qualitative intent to speak to what other bodies have put out there (i.e., the Task Force on the Climate Emergency and the Climate Action Plan). He outlined some of the specific goals therein. The point is well-taken, said Ms. Chesler. The area near Northeast Creek is described a lot in the comp plan, as is a balance between this type of development and habitat preservation. She said she wanted to ensure appropriate consideration. There was discussion about the relevant section.

Secretary Dority asked why the proposed gate was located so far (deep) into the property. An abutter uses that road, said Mr. Byers, and the applicant does not want to block his access. The ordinance discourages people from backing out onto major secondary roads, said Secretary Dority, and it might be advantageous to relocate the gate closer to Knox Road. He asked a question about the road width and the request of the Fire Department. Mr. Byers explained how there is a travel way with tapered shoulders on either side of approximately 2 feet in width. The form the Board received stated it should be a 20-foot travel way, said Secretary Dority, and this is a 16-foot travel way. Perhaps that needs to be clarified with the Fire Department, said Mr. Byers. The applicant does not want to widen the footprint of the road given that there are adjacent wetlands. Mr. Byers agreed to work with the Fire Department to clarify the matter.

Mr. Brechlin asked about electrical grid constraints. There certainly are grid constraints, said Mr. Byers. There's not really the ability to have 30 megawatts of solar power, for instance, because there isn't the consumption demand to justify the associated infrastructure. Regarding plantings, Mr. Brechlin guessed it would take 10 years before the project is not visible. Would it make more sense to have a solid fence shielding the view for neighbors? What happens if there are blowdowns or deer browse the trees up to 6 feet, for instance? Who will make sure it's kept up?

Those are good questions, said Mr. Byers. There is a maintenance schedule in the Land Use Ordinance, said Vice-chairperson Cough. Secretary Dority said the proposed fence should help keep deer from eating away at the buffer. Under Section 9, said Planning Director Gagnon, the recommendation is that the town hold 10% of the total cost of plantings for 3 years for this. More can be required, she noted. Some solar farms in Maine now have “green” shielding, she said.

The idea is to propose taller, more mature trees in a staggered orientation near the Murphy and Stanley properties in particular, said Mr. Byers. The applicant is open to a mechanism requiring a warranty to be placed on the trees, he added. He said it was a fairly common practice, and he explained how it works. Mr. Byers shared his thoughts about solid vs. semi-transparent fences.

Bigger equipment would be required to plant larger trees, said Secretary Dority, and there could be a tradeoff in damage to the site while trying to get larger trees in. “The less equipment the better,” said Secretary Dority. Mr. Byer spoke about what equipment would be involved. He noted there will be no herbicides used on the project, per a Maine DEP requirement.

Vice-chairperson Cough asked whether the Planning Board had gotten off track in its process. He said he thought a lot of the issues touched on related more to compliance. The Board has several decisions to make to further completeness along, said Secretary Dority. Will there be public comment allowed, he asked, that might give further insight?

Chairperson St. Germain opened a public comment period. Matt Bartlett of 29 Lupine Way spoke about the shoreland buffers. He said he had shown the plans for the project to an arborist and an engineer, both of whom said the applicant could not be inside of the 250-foot buffer, said Mr. Bartlett. He said the applicant’s take on selective cutting, as described earlier, did not pass the straight-face test. The proposal does not seem like selective cutting, said Mr. Bartlett, who asked if the project fits in the character of the neighborhood where it is proposed. There has been a suggestion a third-party shoreland expert might be requested, Chairperson St. Germain noted.

Sarah Stanley of 39 Lupine Way spoke next. The trees being proposed aren’t full-height trees. They will be much lower, even when fully grown. When you’re standing on the second floor of homes the project will still be visible. She said she fully supported Mr. Bartlett’s opinions, too.

Chairperson St. Germain asked the applicant to discuss the actual heights of the replacement trees. Trees proposed in the initial plan were 4-6 feet, said Mr. Byers — that is the Day 0 height, when they first go in. He said he was now willing to put in larger trees, however. “We’re not trying to replace [what’s there now], we’re trying to create a buffer,” he added. Most of the trees are shorter, between 4-6 feet, such as white pine, red spruce, bayberry. Mr. Byers said he was sensitive to this concern as voiced by abutters, and was willing to invest in planting bigger trees initially. “If it’s just money, let’s just get bigger trees, right from the beginning,” he said.

The question is not about when the trees are planted but when they're mature, said Secretary Dority. He asked, what is their height when they're mature? Mr. Byers said he did not know offhand what they top out at. They grow around between 8-10 inches or 1-2 feet per year, depending on the species. At year 10 they could be roughly 10-12 feet taller than when they were planted. There's some pruning and trimming that may happen to make sure the visual screening will be maintained, Mr. Byers said. He added the visual buffer must be maintained in perpetuity. Mr. Knapp responded that based on the species selected, cedar and spruce plantings would likely be taller. We're open to collaboration with the abutters in this process, said Mr. Byers. Discussion continued between Mr. Byers and Secretary Dority about landscaping matters.

An expert can provide an opinion on this as well, said Planning Director Gagnon. She explained the difference between a peer review and an expert review. The Planning Board has had a long discussion on trees, she said, and an outside expert opinion may help clarify some questions.

Lori Bartlett, of 29 Lupine Way, said that the environment would already be impacted by taking down large trees. She said she didn't understand the earlier comments from the applicant regarding larger equipment and the impact it would have. She felt it was "ridiculous" for a company to be making money, after making such an environmental impact, for solar energy.

Deputy Code Enforcement Officer Michael Gurtler noted that Acadia National Park is planning for species loss and migration due to climate change and they may be issues to consider in an expert review. He said species that are not native now will be more commonplace in the future.

If we are this concerned about species doing well, asked Planning Director Gagnon, are we absolutely sure they'll work in that soil? Yes, said Mr. Byers. The soil survey is a requested waiver, said Chairperson St. Germain. Does that have a bearing on soils and tree types? That soil survey would be more pertinent to wastewater treatment design, said Mr. Byers.

Mr. Byers spoke about shoreland zoning and the different standards at the state and municipal level. He noted the applicant has secured a Maine Department of Environmental Protection stormwater permit-by-rule and a Maine Department of Environmental Protection Natural Resources Protection Act permit to clear even within wetlands. Bar Harbor has stricter rules, and Mr. Knapp and Mr. Beyer elaborated on this subject and what the differences mean.

This would not be an expert review of Maine Department of Environmental Protection shoreland zoning but the town of Bar Harbor's shoreland zoning standards, said Planning Director Gagnon. The town cannot modify state-mandated shoreland zoning, she explained, but the Planning Board can modify Bar Harbor's zoning if it wished. She said she was just explaining, not encouraging.

Ms. Eveland asked how long additional studies might take if outside experts were engaged. It depends, said Planning Director Gagnon. Stantec is available, for instance, but no timeframe can be offered at the moment. Chairperson St. Germain said his sense was that the applicant was comfortable with the requests for outside reviews, and Mr. Byers said he was because the applicant stood by the data it had provided. There was a discussion on the time frame. Maybe this application warrants its own future meeting, said Planning Director Gagnon, given the time this is taking. She said she was not endorsing the idea, necessarily, but offering it as an option. She touched on the difference between a qualitative review and a quantitative one.

Secretary Dority moved to find application SD-2022-02 Bar Harbor Community Solar complete per the Bar Harbor Land Use Ordinance §125-66 and §125-69 Z. as the following information is missing: staff-provided Public Works Capacity letter, as the Department was waiting on an entrance plan which has now been submitted (Exhibit 9), and b., the executed interconnection agreement, which staff is recommending as a condition of approval.

Planning Director Gagnon noted that the waivers were addressed at the previous meeting. She also said she made a mistake. It should say “although” the following information is missing, rather than “as the” following information is missing. **Secretary Dority withdrew his motion.**

Secretary Dority moved to find application SD-2022-02 Bar Harbor Community Solar incomplete per the Bar Harbor Land Use Ordinance §125-66 and §125-69 Z as the following information is missing: a) staff-provided Public Works Capacity letter, as the Department was waiting on an entrance plan which has now been submitted (Exhibit 9), and b), the executed interconnection agreement which staff is recommending as a condition of approval. Ms. Eveland seconded the motion. Discussion followed, specifically around the entrance plan that was referenced. The Planning Board took a two-minute recess at 7:23 PM.

The Planning Board returned at 7:25 PM. It was determined that the waivers had not yet been addressed. **Secretary Dority withdrew his motion. Ms. Eveland withdrew her second.**

After incomplete attempts, **Secretary Dority moved to grant the waivers requested by the applicant, as such waivers will not unduly restrict the review process, as they are inapplicable, inappropriate, or unnecessary for a complete review. Vice-chairperson Cough seconded the motion, which then carried unanimously (7-0), on a roll-call vote.**

Secretary Dority moved to find application SD-2022-02 Bar Harbor Community Solar incomplete per the Bar Harbor Land Use Ordinance §125-66 and §125-69 Z. as the following information is missing: a.) staff-provided Public Works Capacity letter, as the Department was waiting on an entrance plan which has now been submitted (Exhibit 9),

and b), the executed interconnection agreement which staff is recommending as a condition of approval. Vice-chairperson Cough seconded the motion, which then carried unanimously (7-0) on a roll-call vote.

Secretary Dority moved to recommend that the town employ an independent expert to assist in review of the stormwater management plan per §125-65 D. Ms. Eveland seconded the motion. Discussion around which experts would be hired and what they would review followed. Planning Director Gagnon explained the experts would evaluate the applicant's application against the standards of the Land Use Ordinance. She said it is not designed to be an adversarial process. The motion then carried unanimously (7-0) on a roll-call vote.

Secretary Dority moved to instruct the town to employ an independent expert to assist in reviewing the decommissioning plan cost estimate and agreement, per §125-65 D. Vice-chairperson Cough seconded the motion, which then carried unanimously (7-0) on a roll-call vote.

Secretary Dority moved to request the town to employ an independent expert to assist in reviewing the shoreland zoning issues related to this project, per §125-68. Vice-chairperson Cough seconded the motion, which then carried unanimously (7-0) on a roll-call vote.

Secretary Dority moved to have the town to employ an independent expert to assist in the review of §125-69 Z., visual impact (from the abutter's perspective) and §125-67 H., buffering and screening. Mr. Brechlin seconded the motion.

Discussion followed. Vice-chairperson Cough asked whether the applicant would be open to working with the neighbors first and let the timeline be driven by staff. Secretary Dority liked the idea but felt landowners should also have the option of going further. Planning Director Gagnon said she planned to do that (give the applicant a chance to work on it a bit more after consulting with the abutters). Chairperson St. Germain asked a question about what would be included in the review. The motion then carried unanimously (7-0) on a roll-call vote.

There was a discussion on scheduling and when to eventually hold a public hearing. It was agreed a public hearing in June did not seem realistic; instead, it was seen as likely that there might be a public hearing for compliance in July. The applicant understood this time frame.

~~e. Completeness Review for Site Plan SP 2022-03 — JAX CAEF Project~~

~~Applicant/Owner: The Jackson Laboratory (JAX), 600 Main Street, Bar Harbor, ME 04609~~

~~Application: Placement of a pre-fabricated one-story modular structure located on the "triangle" site adjacent to the existing Research Animal Facility building to be known at the Complex Animal Experimentation Facility (CAEF). The building~~

~~footprint will be 13,027 square feet and gross square footage of the building will be 37,712 square feet. The facility will be used to research and explore a new way to perform animal research, as well as serve as an innovative model for vivarium design focusing in reducing human interaction with mice, optimizing observation, welfare and husbandry.~~

~~**Location:** The property is located at 600 Main Street/Route 3 — Bar Harbor Tax Map 253, Lots 2, 3, and 7. The parcels encompass a total of ±62.55 acres, according to town tax records.~~

~~**District:** Scientific Research for Eleemosynary Purposes~~

This item was removed from the agenda (see Section II, page 1) at the request of the applicant, made prior to the meeting.

VII. OTHER BUSINESS

a. Comprehensive Plan Update — Elissa Chesler

Ms. Chesler updated the Planning Board. The plan is described in a video on the Comprehensive Plan site. There is a lot of outreach happening, including via polling on Polco and upcoming tabling outside the grocery store. May 16 is the next meeting. She said it is an important meeting because the committee will be discussing the existing conditions report.

Last night (May 3) the Town Council approved additional funds for a housing needs assessment, said Planning Director Gagnon, including employee and employer surveys that will cover the labor market area, not just Bar Harbor. That's really exciting, she said, and will provide more detailed information on segments as necessary (rather than relying just on Census data). She said it will also help inform the Planned Unit Development review the Board has been engaged in. "Housing has come up as one of the main issues in just about every single topic," she said.

VIII. BOARD MEMBER COMMENTS/SUGGESTIONS FOR THE NEXT AGENDA

There was a discussion on ex-parte communications. "We just need to be careful," said Chairperson St. Germain. "When people do comment, what we are asking them to do is to comment to the [entire] Planning Board," said Planning Director Gagnon, referring to the planningboard@barharbormaine.gov email address. All comments are sent to the applicant. Be careful not to respond in any way to the applicants, advised Planning Director Gagnon, as that is a conversation that the public is not privy to. Board members should use a barharbor.gov email address, said Vice-chairperson Cough, as all emails are open to Freedom of Access Act requests.

The Planning Board is held to a different standard than other municipal bodies, including under the Freedom of Access Act, said Planning Director Gagnon. It can get really ugly really fast, she said. Mr. Brechlin was concerned a member of the public who wrote to the Planning Board might think they were being ignored if no one responded. He said that seemed like a greater sin. In response to a suggestion from Vice-chairperson Cough, Planning Director Gagnon said she could acknowledge that the communication was received. Members should try to avoid speaking with the public regarding issues before the Planning Board, said Planning Director Gagnon, even in public spaces. There was a discussion of what can be said, what should not be said, and what

should be avoided if possible. Mr. Gurtler brought up a question about an item forwarded to the Planning Board. Are letters received part of the record? Should they be given the same weight, in the record, as comments made aloud at the meeting? Planning Director Gagnon said such written comment becomes part of the master record. They are not part of the minutes, however. There was some discussion about how the Town Council handles such matters.

The difference is that the Planning Board is quasi-judicial, said Planning Director Gagnon. Comments during sketch and completeness reviews can come at any time. Comments for an application at the compliance/public hearing stage have a deadline, or they must come in person. However, if a comment comes in late Planning Director Gagnon said she would still forward it to the Planning Board. She said she understood Mr. Gurtler's point to be more about transparency and ease of access. Mr. Gurtler elaborated on his point. Planning Director Gagnon responded.

The Planning Department has not posted submitted written comments online in the past, even though they are part of the official/overall record. Chairperson St. Germain said some writers have asked to have their respective comment read aloud. He said he has suggested to people that if the three-minute, spoken aloud format feels too constrictive, he's suggested sending an email.

The Planning Board must base its decisions on fact and not opinion, said Mr. Brechlin. Public comments are informative but they are not what the Planning Board should base its decisions on. "We need to have meaningful public participation," said Planning Director Gagnon. She said the strict, formal structure of how public comment is allowed is not necessarily welcoming to the general public, however. The more that conversation is allowed, she said, the more fruitful it can be. The format is not necessarily conducive to working together. She said she really wanted to take a closer look at meaningful engagement overall, within the Planning Board review process.

Regarding posting written comments online, Planning Director Gagnon said there are "so many competing deadlines" within the Land Use Ordinance, and that adding something else to the procedural plate represents another possibility to make an error.

IX. REVIEW OF PENDING PLANNING BOARD PROJECTS (None)

X. ADJOURNMENT

Vice-chairperson Cough moved to adjourn with the clarification that the application SD-2022-04 — Lamb Subdivision is still open. Mr. Brechlin seconded. The motion carried unanimously, 7-0.

Minutes approved by the Bar Harbor Planning Board on June 1, 2022:

06.21.22
Date


Millard Dority, Secretary, Bar Harbor Planning Board