

Consent Agreement Policy

11-15-2022

Town of Bar Harbor

The following policy is hereby established in order to standardize the way in which the Town Council will process requests for consent agreements proposed to settle Land Use Ordinance violations.

Authority

Article X “Enforcement” of the Bar Harbor Land Use Ordinance § 125-101.

“Proceedings; Violations and Penalties” provides in pertinent part:

- A. Actions and consent agreements.

....

- (2) The Town Council or its authorized agent is hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this chapter and recovering fines without court action. Such agreements shall not allow an illegal structure or use to continue in a shoreland district unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

....

- D. Attorneys' fees and costs. An applicant shall pay to the Town all attorneys' fees, court costs and out-of-pocket expenses incurred by the Town in any enforcement action undertaken to correct the applicant's violation of this chapter.

Intent

Since the Land Use Ordinance has been adopted by the voters at a lawfully called election, it is the expectation of the Town Council that all parties shall bring their property into compliance with the Land Use Ordinance to the maximum extent reasonably possible before approaching the Council with a request for a consent agreement. It is the intent of the Town Council to enter into consent agreements only upon an admission that a violation does in fact exist and upon a showing of why a negotiated settlement is in the best interest of the Town.

Typical Procedure

Enumeration of the following procedure is meant for illustrative purposes only and may be adjusted by the Town Council at any time as needed to meet the current situation or as deemed by the Council to be in the best interest of the Town. Steps shown in italics are to be considered optional at the discretion of staff.

- I. Code Officer sends Notice of Violation (NOV)
- II. Owner indicates to the Code Officer an interest in admitting the violation and using a consent agreement to resolve the case, rather than complying with the law or appealing the NOV.
- III. In a letter to the Code Enforcement Officer the owner:
 - A. Admits to the violation,
 - B. Explains why a negotiated settlement is in the best interest of the Town,
 - C. Suggests a comprehensive resolution for all open issues, offering to settle the case by paying the Town's costs as required by LUO 125-101.D and:
 1. Correcting the violation,
 2. Paying a stipulated penalty, or
 3. Combination of the two
 - D. *If deemed pertinent by the Code Enforcement Officer, the owner shall attach a scale drawing of the property, sealed by a Registered Land Surveyor, and showing:*
 1. *Property Lines,*
 2. *All structures on the property,*
 3. *Setback lines, and*
 4. *Surveyor's name, north arrow, scale, date, etc.*
- IV. Code Enforcement Officer submits a written report and recommendation to the Manager.
- V. Manager submits to Council:
 - A. Code Enforcement Officer's report, with recommendation, and
 - B. The owner's letter and any required attachments.
- VI. Town Council to discuss at the next regularly scheduled meeting:
 - A. *Executive session – to discuss the Town's rights and duties with legal counsel, as permitted by 1 MRSA 405.6.E.*
 - B. Open Session – Councilors vote to determine if they are interested in considering a consent agreement, subject to negotiation of acceptable terms.
- VII. Council may hold a second meeting:
 - A. Site visit – The purpose of the site visit is to observe site conditions, not to debate the merits of the case. Accordingly, presentations by the owner, past owner and/or the owner's advocate will not be accepted, although they may answer any questions posed by Councilors.
 1. As required by law, this will be a public meeting, and the public will be allowed to attend.
 2. Meeting notices will be sent, by email or first class mail, to the owner, his/her attorney or agent and the immediate abutters, including those across the street.
 - B. Executive session:
 1. Council discusses settlement options with the Town Attorney and/or Code Enforcement Officer.
 2. Owner should be available, although outside the Council's meeting room.
 3. Manager acts as an intermediary to negotiate a settlement.

VIII. Detailed consent agreement is drafted:

- A. Town Attorney develops an acceptable draft.

IX. Consent agreement finalized:

- A. Owner signs the consent agreement and pays any amount due, plus the estimated amount of the Town's cost to prepare and record the agreement at the Registry, including a reasonable amount for the legal expenses of doing so.
- B. Town Manager places the matter on a Town Council agenda.
- C. Council votes in open session to approve the consent agreement.
- D. If payment has been made by check, staff deposits the check to make sure it clears.
- E. After the check clears, the Town Manager signs the agreement and provides a copy to the owner and the Code Enforcement Officer.
- F. Town Clerk records the consent agreement at the Registry of Deeds.

LEGISLATIVE HISTORY

3-16-10 New policy requested by Council
4-20-10 Council directed changes to draft
5-18-10 Amendment Adopted by Council
10-18-22 Amendments proposed by staff
11-15-22 Amended by Council