

Planning Board Bustins Island Village Corporation

To: Planning Board
From: Kevin Petrie
Copies To: CEO, Appeals Board, Board of Overseers, Clerk
Subject: Minutes of the May 24, 2014 Planning Board Minutes

Date: May 24, 2014
Corrected: July 17, 2014
Approved: July 12, 2014

The meeting was held at the Freeport Fire & Rescue Building, Freeport, Maine. Present were Chair, Warren Barrows, Vice Chair, Dave Gosnell, Christine Martens, Jeff Leland, Associate members Kevin Petrie and Simone Shields, BIVC Board of Overseers member, Bill Cooper and the Roads Committee member, Roger Leland. The CEO/LPI, Ron Tozier was also in attendance. The meeting was called to order at 10:15 a.m. During the meeting the chair appointed Simone and Kevin to vote in place of Charlotte Kahn.

1. **Review of Follow Up Action Items** -

Chair reviewed the To Do List to delete items that were completed. The long term Agenda items were tabled for a future meeting.

2. **Approval of Minutes** -

Upon a motion duly moved and seconded the March 22, 2014 meeting minutes were unanimously approved with corrections.

3. **CEO/LPI Report** -

Ron Tozier reported that Tony Debruyne's building application to construct a covered breezeway between existing house and shed in the Shoreland District on Lot 9 in Section C was denied because it is in the Shoreland District and requires a CUP Hearing. A CUP Hearing will be held on July 5, 2014 @ 9:00 a.m. at the Community House.

4. **Correspondence** -

None

5. **Deeds & Roads Update** -

Bill Cooper reported that all of the deeds for the 2012 road transfers relating to Island Avenue were drafted, signed, and recorded. There were three deeds drafted for previous actions in Section A, along road "C" in 2011 (Johnson, and two for Richardson), but they are not recorded as yet as John Woods has been away all winter. The Planning Board also reviewed the map entitled, "Preliminary Plan of Proposed Conveyances of

Land in Section C, Bustins Island, Freeport, Maine”, made for Lorraine J. Leland et al., Trustees of the Bustins Island Trust, dated 11/30/13. The board voted in favor of bringing the proposed conveyances forward for acceptance at the B.I.V.C. annual meeting in August. Jeff Leland abstained from the vote.

6. **Zoning Map Update** –

Bill Cooper reviewed the latest draft dated, 12/12/13, of the Bustins Island Zoning Map entitled, “Zoning Map of Bustins Island, Freeport, Maine made for Bustins Island Village Corporation prepared by Island Surveys of Arrowsic, Maine. There are still a few outstanding items to be resolved so therefore Bill would like to wait until those matters are sorted out before bringing the map forward for amendment at the B.I.V.C Annual Meeting.

7. **Water Study Update** –

Bill Cooper reported that Ron Lewis, formerly of MACTECH, and Carol White from CA White Associates were invited to come to the next B.I.V.C. overseers meeting where they will discuss what the cost and details will be to update the Water Study.

8. **Pidge’s Cove Update** –

Jeff and Kevin are continuing to pursue bids for the stabilization of the banking at Pidge’s Cove and will be meeting with Steve Durell of Prock Marine hopefully this week to solicit the first estimate. Simone reports that the Maine Dept. of Agriculture has a grant program available that if secured would cover the planning, design, and materials of the project. The grant would not cover the transporting of the materials or labor. There are certain criteria that must be followed not the least of which the island must match some of the funding as well as receive an endorsement from another entity.

9. **Zoning Ordinance Revisions for 2014** –

The Planning Board voted unanimously to bring the following amendment to the Zoning Ordinance forward at the 2014 B.I.V.C. Annual Meeting.

ARTICLE 1 – Earth Moving Activity in the State Shoreland Zone

Shall the BIVC vote to amend the BIVC Zoning Ordinance (the “Ordinance”) by amending Section 5.6(8)) of the Ordinance, entitled “Earth Moving Activity in the State Shoreland Zone” to include a new subsection (d) as shown below setting forth provisions mirroring a recent amendment adding exceptions to the State requirements for earth moving activities in the State Shoreland Zone, as follows:

(8) **Earth-Moving Activity in the State Shoreland Zone**

When an excavation contractor will perform activities resulting in one cubic yard or more of earth material being added or displaced in a shoreland area regulated by the State of Maine, compliance with the following State requirements shall be

required:

- (a) A person certified in erosion control practices by the Maine Department of Environmental Protection shall be responsible for management of erosion and sedimentation control practices at the site. This person shall be present at the site each day earthmoving activity occurs for a duration that is sufficient to ensure that proper erosion and sedimentation control practices are followed. This is required until erosion and sedimentation control measures have been installed, which will either stay in place permanently or stay in place until the area is sufficiently covered with vegetation necessary to prevent soil erosion.
- (b) Include on the required plan or permit application (Building Permit application, Conditional Use Permit application or other DEP permit or Use Permit application), the name and certification number of the person who will oversee activities causing or resulting in soil disturbance.
- (c) For purposes of this section, "excavation contractor" means an individual or firm engaged in a business that causes the disturbance of soil, including grading, filling and removal, or in a business in which the disturbance of soil results from an activity that the individual or firm is retained to perform.
- (d) This subsection (8) does not apply to:
 - (i) Activities resulting in less than one cubic yard of earth material being added or displaced;
 - (ii) A person or firm engaged in agriculture or timber harvesting if best management practices for erosion and sedimentation control are used; and
 - (iii) Municipal, state and federal employees engaged in projects associated with that employment.

Submitted by the Planning Board

PLANNING BOARD REPORT: The Maine Mandatory Shoreland Act has been amended to provide exceptions to the requirement that only contractors certified in erosion control practices, or contractors supervised by a person that has been so certified, may be employed to perform certain earth moving activities in shoreland areas regulated by the State of Maine. The Maine State Department of Environmental Protection previously recommended that municipalities in the State of Maine amended their shoreland zoning ordinances to notify landowners of the State's earth moving requirements in the State Shoreland Zone, and last year the Bustins Island community voted to amend the Ordinance to include the recommended notification, as set forth in Section 8 copied above. Since the State has now amended that statute to include exceptions to the State's requirements, the Planning Board believes it is sensible to

amend the Ordinance to include reference to such exceptions so that landlord owners in the State Shoreland Zone have notice not only of the State’s requirements, but the exceptions to such requirements. The Planning Board recommends that the Ordinance be amended as set forth above to provide such notice to land owners in the State Shoreland Zone.

The Board of Overseers recommends approval.

The Planning Board recommends approval. Because the Planning Board recommends approval, a simple majority vote will be required to pass.

ARTICLE 2 – Deletion of Reference to Normal Low Water Line

The Planning Board voted unanimously to bring the following amendment to the Zoning Ordinance forward at the 2014 B.I.V.C. Annual Meeting.

Shall the BIVC vote to amend the BIVC Zoning Ordinance (the “Ordinance”) by amending Section 4.2.5 of the Ordinance to delete the reference to the normal low water line in such section, as follows:

Existing Provision

4.2.5 All Uses which are not Permitted Uses or Conditional Uses for which a Conditional Use Permit has been granted are prohibited. The provisions of Section 4.2.3(2) notwithstanding, any Use which would require Filling the tideland between the normal low water line and the Normal High-Water Line, except to prevent erosion, restore eroded property, or as incidental to the placement of piers for the construction of docks, is prohibited.

Proposed New Provision

4.2.5 All Uses which are not Permitted Uses or Conditional Uses for which a Conditional Use Permit has been granted are prohibited. The provisions of Section 4.2.3(2) notwithstanding, any Use which would require Filling the tideland below the Normal High-Water Line, except to prevent erosion, restore eroded property, or as incidental to the placement of piers for the construction of docks, is prohibited.

Submitted by the Planning Board

PLANNING BOARD REPORT: As part of its continuing effort to improve the Ordinance by identifying and clarifying potentially ambiguous provisions, the Planning Board has determined that Section 4.2.5 of the Ordinance is potentially ambiguous because the term “normal low water line” does not have a recognized, definitive meaning with and before the Maine Department of Environmental Conservation and other governmental authorities that may exercise jurisdiction in this area. The

Planning Board therefore recommends that Section 4.2.5 of the Ordinance be amended by replacing the existing reference to the tideland between the Normal High-Water Line (which has an accepted meaning) and the normal low water line (which does not have an accepted meaning) with a reference to simply the tideland area below the Normal High-Water Line.

The Board of Overseers recommends approval.

The Planning Board recommends approval. Because the Planning Board recommends approval, a simple majority vote will be required to pass.

10. **Comprehensive Plan Revisions Update** –

Warren reports that he has received the data sets back from the state and he will incorporate that information over the next few weeks. A hearing for the Comprehensive Plan is tentatively set for July 19, 2014 at 9:00 a.m. at the Community House. The Plan will be available 30 days in advance of the hearing for review at both the Community House and the Store.

11. **Any Other Items** - none

Future meetings:

July 5, 2014 @ 9:00 a.m. at Community House, CUP Hearing, ZO & Road Hearings, And PB meeting
July 19, 2014 @ 9:00 a.m. Community House, Comp. Plan Hearing & PB Meeting
Aug 2, 2014 @ 9:00 a.m. Annual BIVC meeting & PB meeting (within)

The motion was moved, seconded, and unanimously voted to adjourn at 1:00 p.m.

Date

Christine Martens, acting as secretary

To Do List

1. Kevin is going to coordinate with Jeff to arrange a meeting with Steve Durell from Prock Marine to meet on Bustins during a low tide.
2. Kevin and Jeff to solicit other bid(s) for estimates on Pidge's Cove
3. Kevin to prepare 2014-2015 meeting schedule and membership for posting at The Store and Community House.
4. Kevin to test "hot spot" device next summer
5. Ron will make C.U.P. and Building Applications separate forms.

6. Ron to contact Matt for intentions of his home based business.
7. Warren will do a search for the term “Low Water Line” in the Zoning Ordinance.
8. Simone to report feedback on inquiry regarding state grants (on-going)
9. Simone to draft letter for Baykeeper for an endorsement
10. Simone & Kevin will work on grant application
11. Dave to contact Freeport Planning Board to see if they would support endorsement
12. Jeff to inquire about long term/future rights to maps in the event that John Wood retires (on going).
13. Warren to draft letter to the BIVC requesting permission to apply for a grant for the repair of Pidge’s Cove.
14. Chris to email CUP Letter and CUP Hearing notice to Tony Debruyne and advertise in The Brunswick Times.

Long-Term Agenda Items:

- Discuss Possible Zoning Ordinance Changes for 2014 – Storage on RP, Clarify permits in section 6.2 of ZO.
- Discuss solar system/fire issues
- Discuss electrical permitting
- Review need for informational handout to help Islanders know what people “can do” regarding cutting regulations.
- Continue to (i) investigate and identify BIVC coastal roads and property at risk of loss due to erosion from existing or projected increase in sea level and storm activity and intensity, and (ii) possible need for professional study of coastal bluffs to determine whether action is warranted, and if so, available options.