



Town of Ogunquit  
Planning Board  
Post Office Box 875  
Ogunquit, Maine 03907-0875  
Tel: 207-646-9326

**OGUNQUIT PLANNING BOARD  
REGULAR BUSINESS MEETING  
MINUTES**

**DUNAWAY CENTER MAIN AUDITORIUM  
May 29, 2019**

**REGULAR BUSINESS MEETING**

**A. ROLL CALL –**

Members Present: Steve Wilkos (Chair)  
Rusty Hayes (Vice Chair)  
Muriel Freedman  
Mark MacLeod  
Jackie Bevins  
Priscilla Botsford (1<sup>st</sup> Alternate)  
Brian Aromando (2<sup>nd</sup> Alternate)

Also Present: Scott Heyland, Director of Codes and Planning

**B. PLEDGE OF ALLEGIANCE -**

**C. MISSION STATEMENT – The Mission Statement was read by Mr. MacLeod.**

**D. MINUTES – May 13, 2019 Workshop and May 13, 2019 Regular Business Meeting.**

**Mr. Hayes Moved to Accept the Minutes of the May 13, 2019 Workshop as Amended.  
HAYES/MACLEOD 5:0 UNANIMOUS**

**Mr. Hayes Moved to Accept the Minutes of the May 13, 2019 Regular Business Meeting as Amended.  
HAYES/MACLEOD 5:0 UNANIMOUS**

**E. PUBLIC INPUT – For any matter NOT already on this Agenda.**

Marilyn Eimon (28 Harbor Lane) is a resident in Perkins Cove. Ms. Eimon expressed concern regarding the proposed Article 6 on the June 11<sup>th</sup> Ballot, an Ordinance Amendment which would allow restaurants in Perkins Cove to legally have take-out windows. Ms. Eimon pointed out that Perkins Cove already has serious problems with overflowing trash cans, benches and other seating areas ruined by melted butter and other food remains, the possibility of an increase in rats, and trash ending up in the water/environment. She asked the voters to vote against the Ordinance change allowing an increase in Perkins Cove restaurant take-out windows at the June 2019 Town Meeting.

**F. UNFINISHED BUSINESS –**

**FINDINGS OF FACT:**

- 1. COSO ENTERPRISES LLC / DWAIN UNDERWOOD / BLACK BOAR INN – 277 Main Street – Map 7 Block 13-1 – GBD1.**

**Mr. Hayes Moved to Accept the Findings of Fact for COSO ENTERPRISES LLC / DWAIN UNDERWOOD / BLACK BOAR INN – 277 Main Street – Map 7 Block 13-1 – GBD1 as submitted.**

With no further discussion by the Board; a vote was taken:

**HAYES/MACLEOD 5:0 UNANIMOUS**

- 2. THE TRAP / JASON EVANS – 117 Perkins Cove Road – Map 3 Block 75 – SGD2 – Site Plan Review for a pre 1930 structure. Change of Use from Type 1 to Type 2 Restaurant with outdoor service.**
  - \* Originally Approved by Planning Board Granted on July 24, 2017.**
  - \* Rule 80B Complaint Appeal filed on September 8, 2017.**
  - \* Justice O’Neil Remanded the Application back to the Planning Board on August 21, 2018.**

Mr. Wilkos noted that due to his and Ms. Bevins absence at the May 13, 2019 Planning Board Meeting, Ms. Botsford and Mr. Aromando would be moved to full voting positions for this Application’s Finding of Fact vote.

**Ms. Freedman Moved to Find that Based on submitted documentation and on statements made during the Hearing held on April 8, 2019 and at prior meetings and Hearings in this matter, the Ogunquit Planning Board votes 5:0 on a Motion by Ms. Freedman and seconded by Mr. Aromando to determine that the Application for THE TRAP / JASON EVANS – 117 Perkins Cove Road – Map 3 Block 75 – SGD2 – Site Plan Review for a Change of Use from a Type 1 Restaurant to a Type 2 Restaurant with outdoor service**

**1) meets OZO Section 3.3.H.4;**

**and**

**2) meets OZO Section 6.7.A.9;**

**and to adopt the Findings of Fact, Conclusions, and Decision.**

With no further discussion by the Board; a vote was taken:

**FREEDMAN/AROMANDO 5:0 UNANIMOUS**

**G. NEW BUSINESS –**

**1. Town of Ogunquit / Marginal Way – RP - Repairs to Storm Damaged Areas.**

Mr. Heyland noted that this application is before the Board because the Ogunquit Zoning Ordinance (OZO) Table of Land Uses requires any activity in the Resource Protection District, where there is filling and earth moving of more than 10 cubic yards, to undergo a Site Plan Review by the Planning Board.

William Walsh from Walsh Engineering provided an overview of the project which spans the entire length of the Marginal Way. There are approximately twenty-five locations on the path that need repairs and /or stabilization due to the March 2018 storms. Mapping of the repair sites was done using a drone and on-the-ground surveys. All of the damage is on the east side of the Marginal Way; between the path and the ocean.

There are twenty-five projects before the Board for review; each of which vary in the extent of damage and the approach which will be taken to make repairs.

He noted that boulders of different sizes will be put in place to protect the edge of the path. The boulders will be pinned with stainless steel pins and epoxy.

Mr. Walsh stressed that they have looked at the sensitivity of the area; and the constructability of it. It was determined that bringing large equipment into certain areas will be tricky.

Mr. Walsh noted that DEP regulates everything within seventy five feet of the Highest Annual Tide (HAT). All but seven of the projects fall under Permit By Rule (PBR) approval. He has met with the DEP and submitted the PBR Applications. The approval time frame is two weeks which should be up next week.

There will be seven projects within twenty-five feet of the HAT, which will require a Full NRPA Permit. He has not yet submitted those applications to the DEP, however he will need to do that as part of the process.

Mr. MacLeod asked about the epoxy to be used in the repair process; and if it is a DEP approved product.

Mr. Walsh responded that they plan to use threaded stainless steel rods and an epoxy which is a DEP approved product.

Mr. Hayes questioned whether or not the Board may find the application complete without the required DEP permits in hand. He referenced Item 6.6.C.EE on the Site Plan Review Submission Checklist.

Mr. Heyland suggested the Board's approval might be contingent upon the Code Enforcement Office receiving the DEP permits before the work begins.

Joan Griswold stated that they will have the “blanket permit’ before they come back before the Board in June. The Full permits (for work within twenty-five feet of the HAT) may take months.

Mr. Hayes responded that as long as he has been on the Board he has never seen a project waiting for so many DEP approvals; and he noted that this is a very unusual situation /application.

Mr. Walsh suggested that PBR and NRPA Permits could be submitted prior to the start of the work if the Board will make that a condition of approval.

Mr. Hayes reiterated that this is a very unusual application with so many DEP Permits pending. He noted that other applicants have been told that the Board will not find an application complete without the permits and they have gone away very unhappy. Mr. Hayes stressed that the Board has to treat every applicant the same, even when the applicant is the Town.

Mr. Wilkos asked which approvals the Applicant will have in hand by June 10<sup>th</sup>.

Mr. Walsh responded that they will have the PBR approvals for those projects which fall outside of twenty-five feet from the HAT.

Mr. MacLeod asked if the existing storm water drainage pipes will be affected by the proposed repairs.

Mr. Walsh responded that they will not.

Mr. Wilkos noted that the Board is here tonight to determine application completeness, schedule a public hearing and/or a site visit. He noted that Requirement 6.6.C.3.EE State and Federal Permits require the DEP Permits. However there is a note on the application paperwork which states that “PBR and NRPA Permits will be provided prior to construction”. He asked if the Board members were comfortable with that.

Mr. Aromando asked if the Board was going to waive the permits. He suggested that the approval could be conditioned upon the Code Enforcement Officer receiving the permits prior to the start of construction.

Mr. Aromando also asked the Applicant what the impact would be, upon the project, if the Board is unable to find the application complete without the DEP Permits.

Mr. Walsh responded that it will push the start of the project out, perhaps for the season. They intend to begin the work in late fall / winter of 2019. Any delay might push them into the 2020 season.

At this time the Board reviewed the standards listed on the Site Plan Review Submission Checklist.

Mr. Heyland summarized that the Application is looking at a total of twenty-five projects; out of those twenty-five, eighteen require a Permit by Rule which involves a fourteen-day review process. If DEP is satisfied, they do not respond; and the Applicant may assume he has his permit. The other seven projects will require full permitting; and if the Board wants to wait until it has the permits in hand the applicant could bifurcate the application and separate the eighteen projects requiring PBR Review from the seven projects requiring full NRPA Permits.

The Board expressed concern that they have never waived DEP permits. It was also noted that waiver requests are usually required to be in writing, similar to a traffic study waiver request which the Board has waived in the past.

Mr. Wilkos noted that this is a unique situation; and he asked if the Board members would be comfortable moving the application forward without the required DEP Permits as noted in Article 6.6.C.3.EE.

The Board members expressed concern about their ability to find an application complete without the required DEP Permits; and it was noted that this application needs to be treated in the same manner as previous applications, which were tabled pending submission of DEP permits. All applicants who come before the Planning Board must be held to the same standards.

Ms. Griswold stated that they have never done any work on the Marginal Way without having a permit in hand. She also reiterated that applicants never have a PBR form. It is the absence of a response from the DEP which tells the Applicant they are good to forward.

Mr. Aromando suggested the Applicant might provide the Board with copies of the PBR applications containing the dates of submittal, this will give the Board some proof that the DEP permit application was submitted, and when.

It was noted that the Board cannot schedule a Public Hearing until they find the application complete; and the Board members do not feel comfortable finding the application complete without something from the DEP.

Mr. Hayes expressed concern approving an application for the 7 projects requiring the full NRPA Permit which may not be received for 6 months. The Board has not done that for other applications and the Board needs to treat all applicants the same. He agreed that the twenty-five projects might be separated into the eighteen PBR and seven NRPA Full Permit.

The Board members determined that they were not comfortable finding this application complete without the DEP Permits in hand; nor were they comfortable waiving DEP oversight.

Carol Murray, Public Works Supervisor agreed the Applicant should separate the seven projects requiring NRPA Permits from the eighteen which only require PBR. They should have the PBR Approval by the next meeting. Ms. Murray also agreed that the Town needs to be held to a higher standard.

Mr. MacLeod reviewed the Site Plan Review Submission Item 6.6.C.3.EE: State or Federal Permits: DEP Site Law, DEP NRPA, DHHS, Army Corps, DOT.

Ms. Botsford asked if the Applicant would need to submit separate application paperwork if they divided the projects between the PBR Permitted repairs and the NRPA Permitted Repairs; or if the Applicant might submit a written description of the separation of the projects.

The Board determined that the Applicant would need to separate the projects into two distinct application packets and resubmit an amended site plan.

Ms. Botsford asked what “Beginning With Habitat” was.

Mr. Walsh responded that it is the name of the group that produces the maps.

The Board asked the Applicant to keep the two new application packets totally separate from each other; and that the presentation of the first set of projects keeps to the PBR projects. The applicant might note that additional applications will follow for the remainder of the work, just to let the public know.

**Mr. MacLeod Moved to Table the Application for Town of Ogunquit / Marginal Way – RP - Repairs to Storm Damaged Areas.  
MACLEOD/HAYES 5:0 UNANIMOUS**

*[Subsequently, on May 31, 2019, the Applicant’s Representative Mr. Walsh requested the application be tabled to June 24, 2019.]*

**H. CODE ENFORCEMENT OFFICER BUSINESS – None**

**I. OTHER BUSINESS –**

**1. Review Comments from the Residential Growth Impact Workshop.**

Mr. Heyland summarized the workshop as a look at where development is happening in Town and what the Board wants to do with that information. There was discussion about the formation of an ad hoc committee to take a complete look at overall growth.

Mr. Heyland will speak with the Town Manager about how ad hoc committees are formed and whether members are appointed by the Select Board; and he will report back to the Planning Board.

Mr. Wilkos reiterated that the Board will need to determine whether or not any actual problem exists before it invests resources in research.

**J. ADJOURNMENT –**

**Mr. Hayes Moved to Adjourn at 7:05 p.m.**

**HAYES/MACLEOD 5:0 UNANIMOUS**

Respectfully Submitted

*Maryann Stacy*

Maryann Stacy

Town of Ogunquit

Planning Board

Recording Secretary

Approved on June 12, 2019

*Note:*

- *These minutes are not a transcript.*
- *All Planning Board meetings are video archived, and may be viewed at any time, on the Town of Ogunquit's website at [www.townofogunquit.org](http://www.townofogunquit.org).*