Meeting of the Town of Chebeague Island Planning Board, Tuesday May 20, 2014 at 7:15 at the Hall

Agenda

1. Minutes of the meeting of March 20, 2014.

2. Public Hearing on two proposals by the Chebeague Inn (Map Io4 Lot 69) to change the zoning of the Inn in order to change its status from being a nonconforming use to be an allowed use in the TOCI Zoning Ordinance. One adds “hotels” to the existing IB district (sect 204.3). The other creates a new IB2 district that only contains the Inn. Both require a change in the existing definition of a “hotel” (sect 110.78) to take out the requirement that each room or suite have a private bathroom.

3. Discussion of recommendation to the Selectmen and Town Meeting.

4. Planning Board membership.
Minutes of the meeting of the TOCI Planning Board, Thursday March 20, 2014 at 7:15 at the Hall

Present: Chip Corson, Louise Doughty, Mabel Doughty, Charles Hall and Beth Howe (Chair)
Absent: Sam Birkett, Jane Frizzell and Ron Tozier, CEO
Others present: Don and Joyce Souchek, Deb Hall and Paul Belesca

1. Minutes of the meeting of February 20, 2014.
   Approval of the minutes was moved by Louise, seconded by Mabel. Approved unanimously.

2. Report on the proposed expansion of the Chebeague Inn
   Beth explained that the Inn was built long before Cumberland had any zoning. In the present Zoning Ordinance, inns and hotels are not a permitted use on the island. So the Inn is grandfathered. It is both a nonconforming building and a nonconforming use. The owners argue that the restaurant is a permitted use, since restaurants are a permitted use in the commercial zone. These nonconformities restrict expansion of the Inn. The owners have proposed changing the entrance from the north side to the south side of the building. This would involve building a porch along the north side along with an entrance hallway, room for baggage and some storage space. Ron Tozier, CEO, has denied their request because the ordinance does not allow the expansion of a non-conforming use, and the entrance is clearly part of the hotel. This decision may be appealed by the Inn to the Board of Appeals. If it is, it may be heard at a meeting in April.

3. Site visit to a proposed site plan by Chip Corson for a farm, kitchen and event space on North Road (Map 05 Lot 7).
   Beth asked if there was interest in a site visit. Louise said yes, once the snow is gone. Someone pointed out that when the snow is gone, it will be muddy. Beth said that a site visit must be noticed like a public hearing and that she would wait till it is time to send the hearing notices to see what the state of the ground is.

4. Review of the proposal on Zoning Ordinance section 412: Extraction, Moving and filling of Earth Materials
   For the benefit of the visitors, Beth explained the purpose for revising this section of the ordinance. Paul said he had read the proposal and thought about it from the perspective of a business person and a home owner. He thinks that the dividing line between proposals that go to the CEO and those that go to the Planning Board, at 1500 cubic yards of material is much too large and asked how it had been arrived at. This was explained. He suggested that Wayne be asked about a suitable dividing line.

The Board took up the various unsettled issues in the draft. The first one was whether to exempt only houses moving more than 1500 cubic yards of material or all new buildings, including commercial ones. There was discussion about whether to use “building” or “structure”. Paul suggested looking at the definitions in the
ordinance. Structure was a more general term and a building was defined as a form of structure. So it was agreed to use “structure” and this provision was adopted by consensus.

The second one was whether to retain the language about not allowing any excavation lower than 5 feet from the seasonal high water table. Beth explained she had talked with Carol White and Peter Maher about this. Peter said the 5’ limit is in State law, though now there is a complex variance procedure for it. Mabel moved that since it is still a part of the State law, we should leave it in the revision. This was seconded by Louise and adopted by a vote of 3 to 1.

The next was a provision not allowing stumps and grubbings to be buried on the excavation site, Beth said she had talked with Peter Maher about this as well. He said that as the stumps degrade under ground they produce gasses that may get into underground trenches and end up in basements. This is not common but it does happen. Chardes asked what else can be done with them since they can’t be taken to the brush dump. Beth said that Peter has said that this really was a problem on the island, and the solution would be to grind them up. Louise and several others objected that this would be much too expensive. They could be left on the surface to decompose. Chip moved to take out the wording about stumps. Louise seconded and the motion passed unanimously. Beth suggested that some information about disposal of stumps could be given out with the excavation permit.

The final issue was whether to allow accessory uses to excavation. This primarily refers to processing the earth, gravel or rocks that are excavated. Large gravel pits have elaborate equipment for sorting and crushing stone and then conveying it to piles graded by size. This is a very noisy process. And the equipment may well be too expensive for the size of gravel extraction that could be done on Chebeague. Wayne has a modest-sized screener. He uses it for screening dirt from one site that is used on another. This does not make much noise. His screener may also sort gravel into different sizes. Chip moved, seconded by Mabel to xxxxxxxxxxxxxx This motion was approved unanimously.

Beth asked if the board would like to revisit the issue of the 1500 cubic yard cutoff for CEO-reviewed applications. They indicated that they did not.

Respectfully,

Beth Howe
May 16, 2014

To: TOCI Planning Board
From: Beth Howe, Chair
Re: Meeting of May 20, 2014

The primary issue on the Agenda for this meeting is a proposal by Casey Prentice, owner of the Chebeague Inn, to make the Inn a permitted use in the TOCI Zoning Ordinance.

Background
Last summer Casey Prentice, owner of the Inn, proposed changing the Town’s Island business district to allow “hotels” as a permitted use. He argued that this change is essential to his ability to plan over the long run for the use and changes at the hotel. I argued that such a change, which would have to be adopted by Town Meeting, might meet with controversy, and he would be better off to develop a contract zone with the Selectmen to lay out what he wants to do with the Inn in the future. He considers this option to be too restrictive of his future planning. He suggested creating a new business zoning district that would only include the Inn’s parcel, thereby not extending the uses in all of the IB district to include hotels. I argued that this would be illegal “spot zoning” in which a particular landowner is provided with the advantage of being able to build something that would otherwise be illegal under the ordinance. Prentice sent this idea of a new zoning district into the Selectmen for their consideration in October. However, he did not come to the meeting when it was taken up and the Selectmen decided to take no action on the request.

Discussions between Ron Tozier, myself and Mr. Prentice about whether this would be illegal spot zoning continued off and on until March 2014.

In the meantime Mr. Prentice developed plans for an extensive remodeling of the building that would move the entrance to the side facing South Road and would create a new entrance hall. He applied to Ron for a building permit for these changes. After discussion with a variety of sources including the Planning Board, Ron Tozier denied their request for a building permit for these changes on the grounds that the changes would mean an illegal expansion of a grandfathered use. This left the Mr. Prentice with the option to appeal this decision to the Board of Adjustment and Appeals. He did not do this.

In March Mr. Prentice and his lawyer discussed the issue with Beth Howe and Eric Dyer, and suggested that either the proposal for adding “hotels” to the IB district or creating a new IB2 district be taken to Town Meeting in June. In the attached letter he asks that the Town consider these proposals. Putting a proposal on the warrant for Town Meeting involves having a hearing before the Planning Board which will make a recommendation to the Selectmen on whether to put one or both proposals before Town Meeting.

Discussion of Current Proposals Before the Board
Mr. Prentice has provided the Board with two different ways to make the Inn a permitted use. Both involve changing the existing definition of a “hotel” to delete the language requiring hotels to have private bathroom facilities for each room, since some of the rooms
in the Inn do not have private baths. Otherwise the proposals differ in the manner in which the zoning district in which hotels would be allowed.

One would be to add "hotels" to the existing Island business district (IB). This proposal would allow hotels to be a permitted use in the IB. It makes no other changes to the ordinance. Some of the implications of this change would be:

- A hotel could be built in any part of the existing IB district.
- It would be a simple permitted use, requiring a site plan review by the Planning Board but no special exception review from the Board of Appeals.
- The lot size, road frontage and setback requirements of the IB district would apply to any hotel. Presumably the existing Inn would be a building built before 1975, which would allow a smaller lot size (1 acre versus 1.5 acres) and would require smaller setbacks than the requirement for buildings built before 1975. I don't know the size of the lot. The Inn does not meet the 20 foot rear setback or the 20 foot side setback on the eastern side of the lot. They would need to get a variance from the Board of Appeals for these two existing setbacks.
- Any new hotel that might be built would have to conform to the current lot standards of 1.5 acres and larger setbacks.
- The proposal also does not make any change in the Residential District, particularly section 204.1.B.13 which allows any use permitted in Island Business to be located in the Residential Zone, with the permission of the Board of Appeals.

The other would create a new IB2 district which would be identical to the existing IB district except that it would also include hotels as a permitted use, again subject to site plan review but not a special exception.

- Again, the IR district language would not be altered. This would mean that hotels would not be allowed as special exceptions in the IR district since the IB2 district would not be added to section 204.1.B.13.

- No zoning map amendment has been provided with the request for the zoning change. I believe that they intend that the IB2 district would be comprised of only the current Inn parcel (Map 104 lot 69). I had argued in the past that this would create a "spot zone" which would be illegal. However the Inn's lawyer Brian Rayback, has produced two Maine Supreme Court cases (attached) that accept the argument that a zoning change for a single parcel would not be considered illegal spot zoning if they are included in a "growth district" in the Town's comprehensive plan. The Inn is located in a future growth area in the TOCI Comprehensive Plan, adopted by the
TOCI Town Meeting. The Inn argues in its letter that the rezoning would also be consistent with the wording of the wording of the Plan as well.

**On a completely different topic:**
Last week my brother, Sheldon came to live with Mac and me because in addition to being autistic, he is also developing dementia. We also found out that he has serious heart problems and, indeed, had to take him to Maine Medical’s emergency room on Tuesday night. He is still a patient there. This has created a major change in my obligations, since I hold his power of attorney. I find that this is taking all of my time and energy. So I am submitting my resignation from the Planning Board today.
April 23, 2014

Eric Dyer
Town Administrator
Town of Chebeague Island
P.O. Box 22
192 North Road
Chebeague Island, ME 04017

RE: Proposed Zoning Change

CC: Beth Howe, Mark Dyer, Richard Prentice, Brian Rayback

Dear Eric:

Following up on our meeting with you and Beth Howe, I am writing to ask that the Town consider an amendment to the Zoning Ordinance that would make the hotel aspect of our business a conforming use. As you know, under the current Zoning Ordinance, hotels are not a permitted use in the Island Business (IB) District where we are located, and thus that aspect of our operations is nonconforming even though our roots as a hotel go back to the 1800s. While we are grandfathered, and thus allowed to continue to operate as a hotel, this makes any changes to the Inn difficult.

For example, we recently submitted an application to the Town to add a new entryway to the building and rearrange portions of the first floor. Our application was denied because it would have expanded the lobby area, which we use to serve both the restaurant and the hotel aspects of our business. The project would not have added any rooms to the hotel, increased our guest capacity, or in any way made the hotel aspects of the business more intense. Rather, it actually would have made the front desk smaller and more efficient.

Since we bought the Inn in 2010, we have made significant strides to ensure that we are part of the Island’s community, and we continue to look for ways to expand that relationship. Last year, 1/3 of our staff were Island residents. We purchase our lobsters from Island fishermen, and we purchase vegetables from Second Wind Farm. We brought the wedding business back to the Inn, which generates significant revenue for CTC, the local rental house market, the taxicab, the Niblic, Ed’s, and other island businesses. Our guests use the CTC ferry, charter sailing trips, and shop at the other businesses on the Island. The Inn is a member of the Golf Course and over 220 of our guests paid to use the golf course facilities in 2013. The Inn houses 28 staff members for the summer, all of whom become customers of local businesses – some even have
become permanent members of the Chebeague Island community. We are proud to provide the fireworks for the Island’s July 4th celebration each year and to host fundraisers for local charities, such as the Historical Society and the Island Commons. Additionally, all profits from the annual Chebeague Chebang are donated to the Rec Center. Thus, our economic future is tied to the Island’s economic future, and we need to be able to make investments in the property to continue to improve it.

While we can apply for a special exception from the Board of Adjustments and Appeals for our project to go forward, we believe that this should not be necessary, either this time or for whatever comes next. Having the hotel classified as a nonconforming use requires us to jump through hoops, increasing costs and making investments to improve the business more difficult. Thus, we are respectfully asking the Town to consider a zoning amendment that would make the hotel a conforming use.

As you will see, we have proposed two options to accomplish this. The first option would simply add hotels to the list of permitted uses in the existing IB District (and amend the definition of “hotel” to eliminate the requirement that each guest room must have its own private bath). In our view, this is the simplest solution. Recognizing, however, that the Town may not want to allow hotels everywhere in the IB District, our second proposal would create a new zone called the Island Business 2 (IB2) District. The new IB2 District would include only the Inn property and would operate almost exactly like the existing IB District, with the exception that hotels would be added to the list of permitted uses.

In either case, we think the rezoning would be consistent with the Town’s comprehensive plan, which sets out a vision that “[s]ummer people as well as summer businesses providing lodging, meals and activities contribute substantially to the island economy and to its social institutions,” and “[z]oning is business friendly and supports economic development that is compatible with neighboring residential uses.” The plan goes on to say that goals for the economy include: “encouragement of new businesses and the survival of existing ones . . . by considering the impact of the Town’s various regulations” and to recommend that the Town “[r]evise zoning provisions on businesses . . . to remove barriers to these economic activities.” We believe that allowing the Inn to continue its hotel operations as a permitted use would promote all of these objectives. As a result, according to Maine court decisions that we shared with Beth, this would not be spot zoning because it would be consistent with the Comprehensive Plan.

We respectfully ask to be included on the agenda for the public hearing on April 30th, and look forward to feedback from the community.

Regards,

Casey Prentice  
General Manager
ALTERNATIVE 1 – AMEND IB DISTRICT

Sec. 110.78 Definitions

*  *  *

110.78 Hotel
A building containing individual sleeping rooms or suites, each having a private
bathroom attached thereto, for the purpose of providing overnight lodging facilities to
the general public for compensation, and in which access to all rooms is made through
an inside office or lobby.

Sec. 204 District Regulations

*  *  *

204.3 Island Business District (IB)

A. The following uses are permitted within the IB District:

1. Single family detached dwellings and duplex dwellings;
2. Manufactured housing and mobile home parks as defined in 30-A M.R.S. §
   4358(1);
3. Retail stores;
4. Uses related to commercial fishing, including, but not limited to, storage and
   repair of boats and equipment, the keeping and cooking of fish for retail sale on
   the premises, and fish processing as a home occupation;
5. Marinas, and other facilities for building and storage of boats;
6. Personal services;
7. Private clubs;
8. Restaurants;
9. Private schools;
10. Municipal buildings and uses;
11. Religious institutions;
12. Private Heliport, Personal Use, subject to Site Plan Review and to the provisions
    of Sec. 422;
13. Home occupations (special exception not required notwithstanding Sec. 415;
14. Auto repair service garage;
15. Residential Care Facility;
16. Agriculture;
17. Timber harvesting;
18. Public Facility,
19. Business/professional offices;
20. Hotels; and
21. Uses and buildings accessory to those above.
Sec. 110.78  Definitions

* * *

110.78 Hotel
A building containing individual sleeping rooms or suites, each having a private bathroom attached thereto, for the purpose of providing overnight lodging facilities to the general public for compensation, and in which access to all rooms is made through an inside office or lobby.

Sec. 201  Zoning Map and Districts

The zoning map officially entitled "Town of Chebeague Island Zoning Map" dated July 1, 2007 (Appendix 1), and on file in the office of the Town Clerk and filed with the Cumberland County Registry of Deeds is hereby adopted as part of this ordinance. Regardless of the existence of other printed copies of the zoning map, the said zoning map on file and as officially adopted by the Town of Chebeague Island Town Meeting shall be the final authority as to the location of zoning districts in the Town; provided, however, that notwithstanding said zoning map, the entire surface area of the following islands is contained within the Resource Protection district: Bangs Island, Little Chebeague Island, Stockman Island, Jewel Island, Little Jewel Island, West Brown Cow Island, Crow Island, Broken Cove Island, Gooseneast Island, Rogues Island, Upper Green Islands, and Sand Island.

The Town of Chebeague Island Zoning Map divides the Town into the following districts:

Island Residential (IR)
Island Business (IB)
Island Business 2 (IB2)
Shoreland Zoning Overly Districts:

Shoreland Resource Protection Overlay (RP)
Resource Protection/Floodplain Overlay (RP/FP)
Limited Residential Overlay (LR)
Limited Commercial Overlay District (LC)
Commercial Fisheries/Maritime Activities Overlay (CFMA)

This Ordinance also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending or located below the normal high-water line of a water body or within a wetland.
Sec. 204  District Regulations

* * *

204.4 Island Business 2 District (IB2)
Site plan review and approval by the Planning Board is required for all permitted uses and special exceptions, with the exception of single-family dwellings, day care homes, bed & breakfast inns with three or fewer guest bedrooms, home occupations, agriculture, and animal husbandry and uses related to commercial fishing as allowed in 204.4.A.4 below.

A. The following uses are permitted within the IB2 District:

1. Any use listed as a permitted use in the IB District, as provided in 204.3.A;
2. Hotels; and
3. Uses and buildings accessory to those above.

B. The following uses are allowed in the IB2 District as special exceptions, requiring the approval of the Board of Adjustment and Appeals

1. Any use listed as a special exception use in the IB District, as provided in 204.3.B

C. The following lot standards shall apply to all lots within the IB2 District created on August 1, 1975 or later:

1. 1.5 acre minimum lot size for single family detached dwellings;
2. In the case of duplex development, there shall be no less than 0.94 acres of lot area per dwelling unit; and
3. There shall be no less than 150 feet of frontage on a public right-of-way.

D. The following setbacks are required for all structures in the IB2 District that are more than 1.5 acres in size or that were created on or after August 1, 1975, except that sheds and driveways are permitted to a minimum setback of fifteen (15) feet from the side and rear lot lines:

1. Front: 55 feet;
2. Rear: 65 feet;
3. Side: 30 feet – combined width at least 65 feet; and
4. Shoreland setbacks shall be as required by Section 427.

E. The following minimum setbacks are required for all lots in the IB2 District that are less than 1.5 acres and that were created on or before July 31, 1975, except that sheds and driveways are permitted to a minimum setback of fifteen (15) feet from the side and rear lot lines:

1. Front: 25 feet;
2. Rear: 20 feet;
3. Side: 20 feet; and
4. Shoreland setbacks shall be as required by Section 427.

Sec. 425

Street Construction

425.1 Private Streets
Private streets meeting the following standards, as determined by the Code Enforcement Officer, may be used to satisfy the lot frontage requirement for residential uses.

A. In the IR and IB, and IB2 zones, an applicant shall submit to the Code Enforcement Officer an application for a private right-of-way required to provide access to a structure located within that zone. The application shall specify the location of the proposed right-of-way, the proposed width, the materials to be utilized in the construction of the road, grades, provisions for drainage, and sight distances at any turning radius. The Code Enforcement Officer shall approve any plan that makes adequate provision for these items, provided that the Fire Chief approves the application for sufficiency of access for emergency vehicles.
VELLA v. TOWN OF CAMDEN, 677 A.2d 1051 (Me. 1996)

Salvatore VELLA and Trician Marine Corporation, d/b/a Camden Harbour Inn v.

TOWN OF CAMDEN.

Supreme Judicial Court of Maine.

Argued February 8, 1996.

Decided June 5, 1996.

Appeal from the Superior Court, Knox County, Atwood, J.

Edward F. Bradley (orally), Portland, for Plaintiffs.


Before WATHEN, C.J., and ROBERTS, GLASSMAN, CLIFFORD, RUDMAN, DANA, and LIPEZ, JJ.

GLASSMAN, Justice.

Salvatore Vella and Trician Marine Corporation, doing business as Camden Harbour Inn, appeal from the summary judgment entered in the Superior Court (Knox County, Atwood, J.) in favor of the Town of Camden on their complaint against the Town seeking declaratory and injunctive relief. The plaintiffs contend, as they did before the trial court, that certain amendments to the Town's zoning ordinance are invalid because (1) they are inconsistent with the Town's comprehensive plan and constitute illegal spot zoning; (2) they violate the equal protection and due process clauses of the United States and Maine Constitutions; and (3) the Board of Selectmen violated the Freedom of Access Law and, based on improper motives, approved of and recommended that the proposed amendments be presented to the Town's voters. Alternatively they contend that because genuine issues of material fact were generated, the trial court erred in granting the Town's motion for a summary judgment. Finding no error in the record, we affirm the judgment.

The legislative body of the Town is the town meeting of its voters. On November 6, 1990, the Town enacted a comprehensive plan, effective November 3, 1992, that, inter alia, designates as a "growth area" the land use area referred to as the Traditional Village district, defined as follows:

Traditional Village: the area that traditionally accommodated most of Camden's population and most of its social and commercial activity. It includes established neighborhoods at medium densities, the central business district, and a mix of compatible uses and activities within walking distance or a very short drive of most village residents. It is virtually all served by public water and sewer. To the extent that growth
potential exists in the traditional village area, it will be in the form of limited infill development, limited conversions for affordable, "mother-in-law" apartments, and adaptive reuse of buildings. Design standards to assure compatibility with the scale and appearance of the village will be as important, perhaps more important, than prescribed densities.

Camden Comprehensive Plan, Part 3, ch. 17. Of the thirty-one lodging establishments in Camden, sixteen are located in the Traditional Village district.

On June 8, 1993, by secret ballot at a town meeting of the voters, two amendments to the Town's zoning ordinance were enacted pertaining to commercial lodging uses. One of the amendments expands the commercial uses in the Traditional Village district by permitting

[h]otels or motels with more than ten (10) but fewer than fifteen (15) sleeping rooms on lots of 3.5 or more acres, provided that the sleeping rooms are in existence and used as such and are located wholly within one structure existing as of June 8, 1993, and further provided that any restaurant facilities located therein shall prepare food and serve meals only to overnight guests of that hotel or motel.

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Zoning Ordinance of the Town of Camden, Maine, art. VIII, /ss 7(B)(25). The other amendment defines "hotel" or "motel" as follows:

A commercial building or group of buildings built or converted to accommodate for a fee travelers and other transient guests, who are staying for a limited duration, with sleeping rooms (with or without cooking facilities). A hotel or motel may include restaurant facilities where food is prepared and meals are served only to its overnight guests.

Id. art. III, /ss 2 (The italicized words indicate amended language. The amendment deleted the words "and other customers" from the end of the second sentence.).

Since 1976, the plaintiffs, or their predecessors, have owned and operated the Camden Harbour Inn, a legally nonconforming lodging establishment with twenty-two rental rooms, a ninety-six seat restaurant and a bar, located in the Traditional Village district on approximately one acre of land. At the time of the enactment of the amendments, the Norumbega Inn, a lodging establishment located in the Traditional Village district on 3.95 acres of land, had no restaurant or bar and was authorized to rent seven rooms. In response to the Town's June 1, 1992 citation of the Norumbega Inn for its operation of thirteen, rather than seven, rental rooms, the Norumbega Inn instituted an action against the Town. On June 21, 1993, after the Town's enactment of the amendments legalized the Norumbega Inn's use, the Town's Board of Selectmen accepted the Norumbega Inn's payments of $1500 for the Norumbega Inn's past violations and $5000 for legal fees incurred by the Town, and the action between the parties was dismissed.

In July 1993, the plaintiffs filed the present multi-count
complaint against the Town. After a hearing on the Town's motion to dismiss the complaint on the ground that it failed to state a claim on which relief could be granted, the trial court (Broodrick, J.) dismissed Count V of the complaint that alleged the Board of Selectmen lacked authority to settle the litigation between the Town and the Norumbega Inn.\[fn1\] Following a hearing on the cross-motions for a summary judgment filed by the parties, the court granted the Town's motion on the remaining counts of the complaint. From the judgment entered accordingly, the plaintiffs appeal.

I.

The plaintiffs first contend the amendments are inconsistent with Camden's comprehensive plan and constitute illegal spot zoning enacted solely for the benefit of the Norumbega Inn. We disagree. As required by 30-A M.R.S.A. \(? 4352\) (2) (Pamph. 1995), "[a] zoning ordinance must be pursuant to and consistent with a comprehensive plan adopted by the municipal legislative body." The plaintiffs bear the burden of proving that the challenged amendments are inconsistent with the Town's comprehensive plan. Labonta v. City of Waterville, 528 A.2d 1262, 1265 (Me. 1987). In reviewing the record to determine whether, from the evidence before it, the legislative body of the Town could have determined that the amendments are in basic harmony with the comprehensive plan, we will not substitute our judgment for that of the legislative body. Id.

"Spot zoning" is a neutral term encompassing both legal and illegal land use controls. The fact that a zoning amendment benefits only a particular property or is adopted at the request of a particular property owner for that owner's benefit is not determinative of whether it is an illegal spot zoning. See Orlando E. DeLuga, Maine Land Use and Zoning Control /ss 7.01 at 450 (1992) ("The fact that some [zoning] amendments treat with small areas or are suggested by a landowner-developer does not mean that the rezoning should not be adopted."); Citizens Ass'n of Georgetown, Inc. v. District of Columbia Zoning Comm'n, 402 A.2d 36 (D.C. 1979) (zoning amendment requested by commercial property owner not an illegal spot zoning despite its "affect[ing] a limited area to the advantage of [that] single owner"). See also Rodgers v. Village of Tarrytown, 302 N.Y. 115, 96 N.E.2d 731, 734 (1951) (defining illegal spot zoning as "the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of other owners").

The Town's comprehensive plan sets forth numerous land use goals and policies. One of its many goals is "[t]o manage population and household growth in Camden in a manner consistent with the Town's ability to absorb it, both environmentally and fiscally." Camden Comprehensive Plan, Part 3, ch. 16(A). Pursuant to this goal, it is the stated policy "neither to promote nor to limit growth, but rather to direct and manage it," especially toward designated "'growth' areas." Id. ch. 16(A)(1)-(2). One of the economic goals set forth is "[t]o encourage traditional forms of livelihood, including the full range of economic opportunity. . . ." Id. ch. 16(B). Pursuant to this goal, the plan recognizes
that "[t]ourism is central to Camden's economic health," and that the attendant increases in visitor population, traffic and demands for Town services "are . . . an acceptable price to pay compared to the economic gains received, provided . . . the commercial core serving this sector (retail establishments, lodgings, restaurants, and similar enterprises) is confined to the traditional downtown and harbor area. . . ." Id. ch. 16(B)(1). The plan encourages accommodating "commercial growth through adaptive re-use of existing buildings. . . ." Id. ch. 16(B)(2).

Here, the record discloses that both the Camden Harbour Inn and the Norumbega Inn, as well as a number of like lodgings, are located in the Traditional Village district, designated as a growth area by the comprehensive plan. There is nothing in the record to indicate that the existing Norumbega Inn structure cannot accommodate thirteen sleeping rooms. The record does not support the assertion of the plaintiffs that the legislative body of the Town did not consider whether the amendments enacted by it were consistent with and in basic harmony with the Town's comprehensive plan. The plan, previously enacted by the legislative body, was in existence at the time of the enactment of the present amendments to the Town's zoning ordinance.

II.

The plaintiffs next contend that the amendments violate the equal protection and due process clauses of the United States and Maine Constitutions. They argue that the amendments are arbitrary and discriminatory and that public notice was inadequate. We disagree.

It is well established law that zoning ordinances are presumed to be constitutional. The burden is on the plaintiffs to show by clear and irrefutable evidence that the amendments infringe on paramount law and to establish a complete absence of any state of facts that would support the amendments. F.S. Plummer Co. v. Town of Cape Elizabeth, 612 A.2d 856, 859 (Me. 1992) (citation omitted). In addition, to establish a claim of denial of equal protection, the plaintiffs have the burden to establish that the amendments are, on their face, prima facie violative of equal protection before the Town is obligated to demonstrate there is a rational basis for the amendments. Begin v. Town of Sabattus, 409 A.2d 1269, 1276 (Me. 1979). The plaintiffs do not contend the amendments are facially violative of equal protection nor have they produced any evidence to establish that no state of facts exists to support the amendments. There is no evidence in this record to support the contention of the plaintiffs that public notice was constitutionally deficient.

III.

We find no merit in the plaintiffs' contention that the discussion of the settlement of the litigation between the Town and

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concerning . . . pending or contemplated litigation [and] settlement offers" may be deliberated in executive session. Section 405(4) requires that a motion to go into executive session "shall indicate the precise nature of the business of the executive session." The record clearly establishes that the Board of Selectmen, prior to going into executive session to discuss the pending litigation involving the Norumbega Inn, stated the session was for the purpose of receiving from the Town's attorney updates on the status of that litigation.

Nor do we find merit in the plaintiffs' assertion that the amendments must be voided because, based on improper motives, the Board of Selectmen approved of and recommended the amendments for presentation to the voters. The voters at a town meeting comprise the legislative body of the Town. The law is well established that "[e]vidence as to the motive of the framers of the law or the influences under which they are enacted is not admissible for the purpose of nullifying an ordinance." Town of Skowhegan v. Heselton, 117 Me. 17, 20, 102 A. 772 (1917). See also Dobbs v. Maine School Admin. Dist. No. 50, 419 A.2d 1024, 1029 (Me. 1980) (courts will not inquire into motives of municipal legislative body nor influences under which it acts, and the same cannot be shown to nullify ordinance duly passed in legal form and within scope of legislative body's powers).

IV.

Finally, the plaintiffs contend the trial court erred by its grant of a summary judgment to the Town. We disagree. A summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, . . . show that there is no genuine issue as to any material fact set forth in those statements and that any party is entitled to a judgment as a matter of law." M.R.Civ.P. 56(c). "In reviewing the grant of a motion for a summary judgment, we examine the evidence in the light most favorable to the nonprevailing party to determine whether the trial court committed an error of law." Enerquin Air, Inc. v. State Tax Assessor, 670 A.2d 926, 928 (Me. 1996) (quoting Dubois v. City of Saco, 645 A.2d 1125, 1127 (Me. 1994)). Applying these principles to our review, we conclude the record discloses no genuine issue as to any material fact and the trial court properly determined the Town was entitled to a judgment as a matter of law. Bailey v. Gulliver, 583 A.2d 699, 700 (Me. 1990).

The entry is:

Judgment affirmed.

All concurring.

[fn1] The plaintiffs do not challenge the court's ruling on this count of their complaint.

[fn2] Amendment XIV of the United States Constitution provides in pertinent part that no state shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." These provisions are reflected in Article I, section 6-A of the Maine Constitution, that provides: "No person shall be deprived
of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of that person's civil rights or be discriminated against in the exercise thereof."

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CITY OF OLD TOWN v. DIMOULAS, 2002 ME 133

803 A.2d 1018

CITY OF OLD TOWN v. ANTONIOS DIMOULAS et al.

Docket Pen-01-146.

Supreme Judicial Court of Maine.

Argued April 4, 2002.

Decided August 9, 2002.

Appealed from the Superior Court, Penobscot County, Marden, J.

[EDITORS' NOTE: THIS PAGE CONTAINS HEADNOTES. HEADNOTES ARE NOT AN OFFICIAL PRODUCT OF THE COURT, THEREFORE THEY ARE NOT DISPLAYED.]

Mark V. Franco, Esq., (orally) Thompson & Bowie, Portland, for the plaintiff.

Antonios Dimoulas, Claudia Dimoulas, Stillwater, Charles E. Gilbert, (orally), Gilbert & Greif, Bangor, for the defendants.

Panel: SAUFLEY, C.J., and CLIFFORD, DANA, ALEXANDER, CALKINS, and LEVY, JJ.

CLIFFORD, J.

[? 1] Antonios and Claudia Dimoulas appeal from several judgments entered in the Superior Court (Penobscot County). The Dimoulases appeal from a summary judgment (Marden, J.) entered in favor of the City of Old Town in the Dimoulases' counterclaim to recover damages for defamation; a judgment (Marsano, J.) entered following a jury trial declaring that a zoning ordinance adopted by referendum is inconsistent with the City's Comprehensive Plan and constitutes illegal spot zoning; and a judgment as a matter of law (Marsano, J.) in favor of the City in the Dimoulases' counterclaim brought pursuant to 42 U.S.C. § 1983 alleging that the City violated their civil rights by failing to act in a timely manner in their attempt to renew their victualer's license. The City cross-appeals from that part of the judgment following the jury verdict (Marsano, J.) that the City is collaterally estopped from denying a license to the Dimoulases because of the Planning Board's prior approval of a site plan. We vacate the judgment declaring the ordinance invalid, but affirm the judgments on the section 1983 and defamation claims. We do not reach the collateral estoppel question.

[? 2] The City's Comprehensive Plan was adopted by the City Council in April of 1995. Regarding the Stillwater area, where the parcel of land at the center of this dispute is located, the Plan provides, in pertinent part:
Commercial activity in what is now downtown Old Town began around 1832 to serve the workers, sawmill operators, and river drivers who congregated in this area. Downtown is still an important local commercial center, although Stillwater Avenue had superseded downtown as the principal commercial area. . . . The Stillwater area grew up around the ledges in Stillwater. Although Stillwater village is not a commercial center, it remains a desirable residential community.

Old Town, Me., Comprehensive Plan 9-1 (April, 1995).

[? 3] Later, in a section entitled "Commercial and Industrial Trends," the Plan describes the development of commercial activity in the Stillwater area in more detail:

While the downtown area still contains the largest concentration of businesses, other commercial areas have emerged in recent decades. There is now a great deal of commercial activity along Stillwater Avenue. Commercial growth in recent years has been guided by the City's zoning ordinance, which places the downtown in the C-1 (Commercial Business) zone, portions of Stillwater Avenue in the C-3 (Highway Commercial) and C-4 (Shopping Center) zones,

and a small portion of Treat-Webster Island in the C-3 Zone. There are a number of home occupations located throughout the community, as well as neighborhood grocery stores.

Id. at 9-4.

[? 4] The City Charter allows ordinances to be adopted by referendum. It provides that "[a]n ordinance adopted by a vote of the people shall not be repealed or amended except by a vote of the people, unless such ordinance shall otherwise expressly provide."

[? 5] Section 111.4 of the City Zoning Ordinances defines the Commercial-Business C-1 zone as follows:

The C-1 zone is established to accommodate those retail, service and office uses which are of city-wide significance. Within this area of concentrated activity and intensive development is the central business district, offices of professional and nonprofessional persons offering a variety of specialized services, and important public facilities. New construction and any alteration of existing building or land use should be consistent with the objective to develop and maintain the central business district.


[? 6] Subsection (b) of that same section lists permitted uses for land zoned C-1. Almost any normal business activity is permitted in
the C-1 zone.

[? 7] The Dimoulases had been operating a small store on Stillwater Avenue for several years. In addition to groceries and other sundries, the store had a delicatessen and bakery. Although the store property was zoned as residential, the store did not violate the zoning ordinance because the ordinance allowed neighborhood grocery stores in residential areas. In 1995, the Dimoulases decided to set up tables and chairs where customers could eat deli and bakery items. The Code Enforcement Officer determined that these proposed changes would not be consistent with the definition of neighborhood grocery store. The Dimoulases appealed this determination to the Zoning Board of Appeals (the Board), where they argued that the tables and chairs did not bring the store outside the definition of neighborhood grocery store because a neighborhood grocery store was defined as a business primarily for the purpose of selling food for consumption off-premises. The Dimoulases reasoned that providing a location for on-premises consumption of food was a secondary purpose because the area with the tables and chairs took up only about ten percent of the floor space of the store. The Board agreed, and reversed the determination of the Code Enforcement Officer.

[? 8] In regard to the issuance of licenses, the ordinances provide, in pertinent part:

When any applicant or premises is found, based upon the appropriate inspections by the city or the department of human services (division of health engineering), not in compliance with the requirements of the department of human services or city regulation, the city may refuse issuance of the license.


[? 9] The Dimoulases obtained a victualer's license on November 12, 1997. This license was revoked after the Code Enforcement Officer inspected the premises and determined that the Dimoulases were using more than ten percent of the floor space for the on-premises consumption of products purchased at the store and were consequently not in compliance with the zoning ordinances.[fn1]

[? 10] In appealing this determination, the Dimoulases asked the Planning Board to rezone their property from Residential R-1 to Commercial C-1.[fn2] The Board took evidence and considered this proposed change at a hearing on May 22, 1998. At the end of the hearing, the Board found that rezoning the property to C-1 would be inconsistent with the Comprehensive Plan and would constitute illegal spot zoning. It consequently refused to rezone the property.

[? 11] In response to this denial, the Dimoulases arranged to have a referendum presented to the voters in the next election that would change the classification of the lot on which the store was located from R-1 to Commercial C-1. In a special election on June 9, 1998, the question presented to the voters was whether to:

Amend the Official Zoning Map of the City of Old Town, Maine by changing 827 Stillwater Avenue, Map 15, Lot 7 on the City of Old Town tax maps, from R-1 to Commercial C-1.
The Planning Board had held a public hearing on the proposed amendment on May 22, 1998. The Board unanimously recommended that the voters not adopt the proposed ordinance, but the voters approved the amendment. Immediately after the election, the Dimoulases appealed to the City Clerk's May 27, 1998 denial of a victualer's license on the ground that the City Clerk's determination was rendered "moot" by the referendum. The City Council did not hold a hearing or issue a ruling on this appeal.

On June 24, 1998, the City, its Code Enforcement Officer, and two neighbors of the Dimoulases filed a complaint in the Superior Court against the Dimoulases seeking a declaratory judgment that the amendment adopted by referendum was void because it failed to comply with the Comprehensive Plan and constituted illegal spot zoning, and that the restaurant was located on a parcel of land zoned R1-S. The Dimoulases counterclaimed seeking damages for (1) violations of their civil rights, pursuant to 42 U.S.C. § 1983, arising out of the refusal of the City to issue the victualer's license, and (2) defamation arising from derogatory comments made by the City Manager about the Dimoulases.

On June 29, 1998, the Dimoulases applied for a site plan review pursuant to the City's Zoning Ordinances. The site plan review was required in order for the Dimoulases to obtain a victualer's license. The site plan was approved on September 14, 1998, and the Dimoulases received a victualer's license in October.

Meanwhile, the Superior Court entered a summary judgment in favor of the City in the Dimoulases' defamation counterclaim, on the ground that the City is immune under the Maine Tort Claims Act. The court denied summary judgment on the other claims. A jury trial was held on the remaining issues. The jury found that (1) the amendment to the ordinance adopted by referendum was invalid because it was inconsistent with the Comprehensive Plan, (2) the amendment constituted illegal spot zoning, (3) the property is located in an R1-S district and consequently is not zoned for use as a restaurant, (4) the Dimoulases were nevertheless entitled to continue operating the Market Cafe as a restaurant because the approval of the site plan was res judicata and the City was estopped from claiming that the Dimoulases could not operate a restaurant, and (5) the City had violated the Dimoulases civil rights, and the Dimoulases were damaged in the amount of $2500. The parties renewed motions for judgments as a matter of law on the claims.

The Superior Court upheld the jury's determinations on the question involving the Comprehensive Plan and spot zoning, as well as the determination that the Dimoulases could continue to operate their enterprise as a restaurant. The court vacated the jury's verdict in favor of the Dimoulases on their section 1983 claim, and entered judgment for the City, concluding that the Dimoulases did not have a property interest in a victualer's license as a matter of law, and that the evidence on damages was insufficient. The Dimoulases appealed the judgments against them, and the City cross-appealed that part of the judgment that the Dimoulases were entitled to continue to operate the restaurant.

I.
[? 17] Any municipal zoning ordinance must "be pursuant to and consistent with a comprehensive plan adopted by the municipal legislative body." 30-A.M.R.S.A. § 4332(2) (1996). A "comprehensive plan" is "a document or interrelated documents containing the elements established under section 4326, subsections 1 to 4 ['local growth management program'], including the strategies for an implementation program which are consistent with the goals and guidelines established under subchapter II ['GROWTH MANAGEMENT PROGRAM']." Id. at 4301(3).

[? 18] Although the question of whether the ordinance is consistent with the Comprehensive Plan is a question of law, the burden is on the City, as the party challenging the ordinance, to "pro[v]en[e] that the challenged amendment[] is inconsistent with the . . . comprehensive plan." Vella v. Town of Camden, 677 A.2d 1051, 1053 (Me. 1996). In enacting the ordinance, the voters of Old Town determined that the proposed ordinance was in harmony with the Comprehensive Plan. We discern no error in that determination.

[? 19] Although the City identifies several sections of the Comprehensive Plan that it contends the ordinance violates, these provisions do not prohibit commercial development in the Stillwater area. The City argues that the absence of a statement affirmatively allowing commercial development in the Stillwater area should be interpreted to mean that no commercial development is permitted. We disagree. The absence of language expressly allowing commercial development in the Stillwater area does not necessarily mean that no development is allowed, and some commercial development in that area is not inconsistent with the Comprehensive Plan.

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[? 20] The City also contends that the ordinance adopted by the voters was illegal "spot zoning." The term "spot zoning" refers to any zoning ordinance that is designed to specifically benefit a particular parcel of land. Vella, 677 A.2d at 1053. "Spot zoning" is not itself a pejorative term, and the mere fact that an ordinance benefits a particular piece of land will not render it illegal. Id. Illegal spot zoning is the "process of singling out a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of other owners." Id. at 1053-54 (quoting Rodgers v. Village of Tarrytown, 96 N.E.2d 731, 734 (N.Y. 1951)). In order to constitute illegal spot zoning, the ordinance "(1) must pertain to a single parcel or a limited area?ordinarily for the benefit of a particular property owner or specially interested party?and (2) must be inconsistent with the city's comprehensive plan, or if there is none, with the character and zoning of the surrounding area, or the purposes of zoning regulation, i.e., the public health, safety, and general welfare." Citizens Ass'n of Georgetown, Inc. v. District of Columbia Zoning Comm'n, 491 A.2d 36, 39-40 (D.C. 1979) (followed by Vella, 677 A.2d at 1053).

[? 21] Because the City has failed to establish that this ordinance is inconsistent with the Comprehensive Plan, the ordinance does not constitute illegal spot zoning.[25] Accordingly, we vacate the judgment entered on the jury verdict that the ordinance is inconsistent with the Comprehensive Plan and is illegal spot zoning, and do not address the City's challenge to the jury's determination that it was estopped from prohibiting the Dimoulases from operating the restaurant.[26]

II.
[? 22] The Dimoulases also challenge the Superior Court's decision to set aside the jury verdict finding that their civil rights had been violated and awarding them $2500 in damages. The jury's findings of fact are entitled to deference, and we review the record to determine whether there was sufficient evidence to support the jury's verdict. Marquis v. Farm Family Mut. Ins. Co., 628 A.2d 644, 648 (Me. 1993).

[? 23] In order to establish a claim under 42 U.S.C. ? 1983, the plaintiff must establish "(i) that the conduct complained of has been committed under color of state law, and (ii) that this conduct worked a denial of rights secured by the Constitution or laws of the United States." Chongris v. Board of Appeals of the Town of Andover, 811 F.2d 36, 40 (1st Cir. 1987). If the plaintiff is able to establish the deprivation of an interest protected by the due process clause of the Fourteenth Amendment, we must decide what process is "due" and whether it was provided. Id.

[? 24] Even if we assume that the Dimoulases' right to a victualler's license constituted a property interest sufficient to trigger the protections of the due process clause, and that the damage evidence presented by the Dimoulases was sufficient, we are unpersuaded that the Dimoulases were denied adequate process. Applicants to an administrative entity are entitled, at a minimum, to notice and the opportunity to be heard before an adverse determination is made against them. See Gorham v. Town of Cape Elizabeth, 625 A.2d 898, 902 (Me. 1993) (appellant to an administrative board is entitled to a fair and unbiased hearing). In this case, the City Council did not address the Dimoulases' appeal from the denial of their request for a victualler's license. The City did bring a declaratory judgment action, however, to determine the validity of the recently enacted amendment to the ordinance that rezoned the land to allow the Dimoulases to operate the restaurant. For purposes of a due process analysis, the legal issues surrounding the amendment to the ordinance, and the right of the Dimoulases to operate the restaurant were resolved in court proceedings. The court proceedings gave the Dimoulases notice and an opportunity to be heard on the issue of their right to operate their restaurant, and there was no denial of due process.

III.

[? 25] The Dimoulases also challenge the summary judgment granted to the City in their defamation counterclaim based on comments made by the City Manager at a meeting of the City Council. The Dimoulases concede that the City would normally be immune from liability under the Maine Tort Claims Act, 14 M.R.S.A. ? 8101-8118 (1980 & Supp. 2001), for the comments of the City Manager in this context, but argue that liability has been waived pursuant to 14 M.R.S.A. ? 8116 (Supp. 2001), which provides that a governmental entity waives its immunity to the extent it obtains insurance that provides coverage in areas where the entity would normally enjoy immunity. Here the City has a policy issued by the Maine Municipal Association Property & Casualty Pool. The policy, however, limited coverage to "those areas for which governmental immunity has been expressly waived" pursuant to specified provisions, and also provided that "[l]iability coverage shall not be deemed a waiver of any immunities or limitation of damages available under the Maine Tort Claims Act, or other Maine statutory law, judicial precedent or common law." In Doucette v. City of Lewiston, 1997 ME 157, ?? 8-10,
697A.2d 1292, 1294, we concluded that this disclaimer is sufficient to
avoid a waiver of immunity pursuant to section 8116. Accordingly, summary
judgment was properly entered in favor of the City on the Dimoulases' de
famation claim.

The entry is:

Judgment affirmed in part, and vacated in part and remanded to the
Superior Court.

[fn1] Apparently, the Code Enforcement Officer made this determination in
September of 1997, which was before the license issued. The license was
subsequently revoked due to this determination sometime after it was
issued.

[fn2] The Dimoulases also took several other actions in response to the
revocation of the license. First, they applied for a variance, but were
refused. They also brought an action in the Superior Court and procured a
stay of the revocation of the license. The City and the Dimoulases
subsequently disagreed about whether the stay required the City to renew
the license once it expired. Ultimately, the City refused to renew the
license when it expired in May of 1998.

[fn3] This refers to the fact that the area where the property is located
is a "shore overlay zone." It is possible to have commercial zones within
the shore overlay zone.

[fn4] Because they involve questions of law, it is not clear why the
issues involving the Comprehensive Plan and spot zoning were determined
by a jury.

[fn5] The requirement that a zoning ordinance be consistent with a
comprehensive plan is a statutory requirement. 30-A M.R.S.A. ? 4352 (2)
(1996). The doctrine of illegal spot zoning, as articulated in Vella, is
a common law rule developed to ensure that municipal zoning bodies do not
act in a manner that is arbitrary, irrational, or unfair. See generally
Deloug, Maine Land Use Control Law ?? 6.01-.07 (1997). Since
consistency with a comprehensive plan is sufficient to satisfy the common
law requirement that neither the ordinance itself nor the procedures
employed to enact it were arbitrary or fundamentally unfair, the spot
zoning doctrine, as a practical matter, is reserved for municipalities
that have not enacted a valid comprehensive plan. Now that the
Legislature has required all municipalities to adopt a comprehensive plan
to govern their zoning rules, it is likely that the common law spot
zoning principles are still valid, but will be less
significant.

[fn6] We are unpersuaded by the City's argument that the referen
dum failed to fully change the zoning ordinance because the area was also
within an RI-S overlay zone. The overlay zone refers to the fact that
this land is close to a shore, and land in this overlay zone can be
either residential or commercial.
PROPOSED ZONE CHANGE
DRAFT – FOR DISCUSSION PURPOSES

Goal

- Revise zoning ordinance to make the current uses at the Chebeague Island Inn legally conforming.
- Currently, the lodging and hotel aspects of the business, which have existed since the 1800s, are legally nonconforming. This resulted in a denial recently by the CEO of a proposal to revise the entrance to the Inn. This hinders our ability to plan for the future and invest in improvements.

Proposal

- Amend the zoning ordinance to create a new zone – Island Business 2 (or something similar).
- The new zone would adopt all of the same uses currently provided in Island Business, with the addition of “hotel” and “lodging house” as permitted uses. Both are existing uses at the Inn that predate adoption of the zoning ordinance, but are not allowed in the Island Business zone under current regulations.
  - “Hotel” is defined as “[a] building containing individual sleeping rooms or suites, each having a private bathroom attached thereto, for the purpose of providing overnight lodging facilities to the general public for compensation, and in which access to all rooms is made through an inside office or lobby.” See § 110.78.
  - “Lodging House” is defined as “[a] building used for temporary occupancy of individuals who are lodged with or without meals and in which bathroom facilities may be shared.” See § 110.89.
- Retain minimum lot size of 1.5 acres, all other provisions of the new zone to match Island Business.
- Scope of new zone to be limited to the current boundary of the Inn’s property (approximately 2.1 acres), thereby limiting the impact of the proposed change.

Consistency with Comp Plan

- Vision for Chebeague includes: “[s]ummer people as well as summer businesses providing lodging, meals and activities contribute substantially to the island economy and to its social institutions,” and “[z]oning is business friendly and supports economic development that is compatible with neighboring residential uses.” See page 17.
- Goals for the economy include: “encouragement of new businesses and the survival of existing ones . . . by considering the impact of the Town’s various regulations.” The corresponding recommendation is to “[r]evise zoning provisions on businesses . . . to remove barriers to these economic activities.” See page 44.
- The Comp Plan recognizes that Chebeague supports mixed-use developments that include residential, commercial, and institutional uses, and explaining that “Chebeaguers value businesses on the island and have simply developed a fairly high tolerance for mixed uses . . .” See page 98.
- Retains basic minimum lot size of 1.5 acres, and recognizes the “present pattern of allowing a mixture of housing, business, and public institutions,” while “[m]inimizing changes in the Town’s existing zoning.” See page 103.

{WG215320.1}
Hi Eric, Mark,

I would like to get an agenda item on the next Town Meeting to address Chebeague Island Inn’s request for a zoning change to make the lodging component of our business an allowed use on our site.

Understanding and appreciating Beth Howe’s concern that the Planning Board may be hesitant about opening up the possibility of other hotels opening on the island, I am open to doing this in a variety of different ways. I spoke with Ron Tozier earlier and he recommended using the same approach that Mr. Stevens used for his auto repair business across the street from the Grange. Under this approach, the commercial zone that covers the Inn would be amended to allow lodging but only with approval through the site plan process.

Because the Inn has been operating as a lodging facility since the 1800’s I’m hoping this process can be fairly painless.

I understand there is a meeting tomorrow but that it is too late to get on that agenda. Please let me know when the next meeting is so we can prepare to present our case. Please also let me know what, if anything, would be needed by the Town for the meeting or the subsequent processes.

Sincerely,

Casey

Casey W. Prentice
President & CEO

Prentice Hospitality Group
2 Market Street
5th Floor
Portland, ME 04101

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