May 20, 2014

To: Town of Chebeague Island Selectmen

From: Town of Chebeague Island Planning Board

Re: Proposal by the Chebeague Inn asking the Town Meeting to create a new IB2 commercial district.

The Planning Board held a public hearing on Tuesday May 20 at 7:15 in the hall on a proposal by Casey Prentice, owner of the Chebeague Inn, to create a new IB2 commercial district in the TOCI Zoning Ordinance that would allow hotels to be a permitted use. The only parcel and use in this new district would be the Chebeague Inn. Otherwise the district description would be the same as the existing IB district. The purpose of the request is to change the Inn from a non-conforming use to a conforming one. The purpose of the public hearing was to take public comment on this proposal and to make a recommendation to the Selectmen about whether it should be included in the warrant for Town Meeting on June 7, 2014. Fourteen people testified at the hearing and perhaps an equal number of others were there.

The Planning Board’s unanimous recommendation is that the IB2 district proposal not be put on the warrant to be voted on by Town Meeting. We also recommend that the Selectmen create a committee to revise the current Zoning Ordinance so that it better reflects the needs of the Chebeague community as stated in its Comprehensive Plan.

The reasons for this recommendation relate to: the timing of the Inn’s proposal, the argument that the kind of spot zone that it would create would be legal, a concern about piecemeal changes in the zoning ordinance without regard to conformance with the Comprehensive Plan, and the unwillingness of the applicant to use the avenues already available to him to get the development permissions he wants.

Timing: The hearing on the proposal from the Inn was held by the Planning Board one day before you needed to decide on the final wording of the warrant for Town Meeting. This precluded a proper review of the proposal in which the Planning Board could hear the public’s comments and concerns and make suggestions to Mr. Prentice for changes that might make the proposal more broadly acceptable to members of the public. Specific sections that might have been amended were: the definition of a hotel, the specific uses, other than a hotel, that would be allowed in this new district, and whether hotels would be allowed in the Island Residential zone under Section 204.1.B.13, after the granting of a special exception by the Board of Appeals and review of a site plan by the Planning Board. The proposal also did not provide a revised Zoning Map, showing where the new zone would be located.
Spot Zoning: The Inn’s lawyer Brian Rayback provided the Board with two decisions by the Maine Supreme Judicial Court that found that some kinds of spot zoning – the change in zoning of a single parcel for the benefit of a single business or person – could be legal if the zoning change was consistent with the town’s comprehensive plan. He argued that the Chebeague Comprehensive Plan supports encouragement of existing businesses by considering the impact on them of the Town’s various regulations by revising the zoning provisions on businesses to remove barriers to economic activities. The plan also supports mixed-use development, with businesses located in the residential zone.

However, these two cases do accept the idea that spot zoning can sometimes be illegal, citing a case from New York State that defines 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 two cases cited by the Inn both involved spot zoning in downtown areas of a city where the comprehensive plan explicitly supported more intense commercial use. The Inn is in a small commercial district but is surrounded on two sides by a golf course and on two sides by a residential district. This area is designated in the Chebeague Comprehensive Plan as a “future growth area” for additional, infill residential development in an effort to retain the rural character of the center of the island. This area is not an “activity zone” where more intense development might be expected. While the Inn has been in this site since the 19th century, the nature of the Inn and the nature of its neighbors have both changed in recent years, making it a less compatible neighbor for a residential area. The proposed zoning change would make it possible for the Inn to expand on its 2 acre lot, making it even less compatible.

More fundamentally, members of the Board think that the Inn’s reading of the Comprehensive Plan is a quite narrow one. It focuses only on some provisions related to encouraging economic development, without noting the broader goals of the plan to support an affordable, year round community and economy. It also makes no mention about one of the central goals: to retain at least some of the traditional rural character of the island.

Piecemeal Zoning Changes: The Planning Board has been working for the past several years on a comprehensive revision of the Zoning Ordinance to bring it into conformity with the Comprehensive Plan. The Board started with “easy” topics like site plan review, and earth excavation and extraction, which was referred to it by the Selectmen. The most difficult part of any zoning revision is changing the uses in, and geographical location of, the various zoning districts; and we have not tackled that yet. The Inn’s proposed change in the number and nature of the zoning districts is not intended to bring the ordinance more into conformance with the Comprehensive Plan. To the contrary, members of the Planning Board think it might lead to additional proposals for miscellaneous single-parcel zoning districts with no attention paid to the requirement that the zoning ordinance as a whole be shaped by the comprehensive plan. The time may be right for the Selectmen to create a new committee whose task will be to push further and faster on the comprehensive zoning revision. This is our primary recommendation.

Private versus public interest: In the end, land use planning and regulation is always a balancing act between the right of property owners to develop and use their property as they wish, and the right of the neighbors and others in the community to be protected against the external effects,
such as noise or excessive traffic, that that development may create. The owner of the Inn has several avenues – appeal to the Board of Adjustment and Appeals or contract zoning – that he could use to get permission from the Town for the changes he wants to make. He did not avail himself of these options because they are “cumbersome” and restrict his freedom to act. That is exactly why they exist. The Planning Board views this lack of balance between personal and community interests as a fundamental problem with his proposal to change the zoning.