Board of Selectmen Meeting and Budget Workshop Minutes May 21, 2014

The Board of Selectmen held a meeting and budget workshop on Wednesday, May 21st, 2014 at the Island Hall beginning at 6:00pm.

Selectmen present: David Hill, Susan Campbell, Herb Maine and Donna Damon
Absent: Mark Dyer

Also present: Eric Dyer, Gloria Brown, Dave Stevens, Jane Frizzell, Bruce Riddle, Jay Corson, Richard Prentice, Cheryl Buxbaum, Deb Hall, Deb Bowman, Ariette Scott, Ginny Ballard, Mary Holman

First Order of Business: Donna Damon called the meeting to order at 6:08 p.m.

Taken out of order:

14-187: Consider a recommendation from the Planning Board with respect to a proposed change to the Zoning Ordinance

- Donna read into the record a letter from the Planning Board regarding their meeting on May 20th regarding the proposed change (see attached).
- David read into the record a letter from our Town Attorney regarding this proposal with regard to spot zoning (see attached).
- The Board received a response letter from Chebeague Island Inn (see attached).
- Discussion ensued.

Motion: Moved by David Hill and seconded by Herb Maine to accept the warrant article as proposed with additional language to be provided by our attorney that there would be a special exception in just the I.B.2 zone.

2-2 (Donna Damon and Susan Campbell opposed, Mark Dyer absent), Motion Failed

Second Order of Business: Workshop
To have the Board of Selectmen hold a Workshop to review the final draft of the Fiscal Year 2014-2015 Town Meeting Warrant (which includes budget information).

- Changes were discussed; need to confer with Bump
- Discussion re: capital funds
- Discussion re: wording of explanations

Third Order of Business: Regular Business
To have the Board of Selectmen:
14-188: Approve changes to the Fiscal Year 2014-2015 Town Meeting Warrant and authorize printing, mailing, and posting of the document

- Received mark-ups of proposed ordinances from Brann & Isaacson (attorneys)
- Need another meeting to incorporate changes

**Fourth Order of Business:** Other Business: none

**Fifth Order of Business:** Adjourn Meeting

**Motion:** Moved by Susan Campbell and seconded by Herb Maine to adjourn the meeting at 8:15 p.m.

**Unanimous, Motion Carried**

Respectfully submitted,

Gloria J. Brown  
Deputy Town Clerk
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.
MEMORANDUM

To: Town of Chebeague Island Board of Selectmen
   Eric Dyer
From: Peter Lowe
       Anne Torregrossa
Date: May 20, 2014
Re: Rezoning of Chebeague Island Inn

You have asked about the legality of amending the Town of Chebeague Island Zoning Ordinance to carve out the parcel owned by the Chebeague Island Inn as a distinct land use zone, subject to different land use regulations than the rest of the Island. Specifically, you have asked whether this is illegal “spot zoning.” For purposes of this memo, I will assume that all other procedures for passing a zoning ordinance change have been followed, including the requisite public hearings, and address only the spot zoning issue.

“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.’” City of Old Town v. Dimoulas, 803 A.2d 1018, 1024 (2002). “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.” Vella v. Town of Camden, 677 A.2d 1051, 1053 (Me. 1996). 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.” Dimoulas, 803 A.2d at 1024. Therefore, the key question is whether the proposed zoning change is consistent with the Town’s comprehensive plan. Id.

Chebeague’s Comprehensive Plan designates the Chebeague Inn parcel as a “future growth” area. Comprehensive Plan p. 95. This is an area where future residential and commercial growth might occur in the future. The Comprehensive Plan, “makes no detailed recommendations about the form the revised Zoning and Subdivision ordinances should take.” P. 103. Therefore, the amendment requested by the Inn appears to be consistent with Chebeague’s Comprehensive Plan. Simply because the amendment applies to a single parcel,
does not make it improper. The Law Court upheld a similar zoning law change in *Vella*, finding that the business affected was located in a zone designated as a growth area by the comprehensive plan. *Vella*, 677 A.2d at 1054.

It is not clear whether the rezoning Article was placed on the Warrant as the result of a petition, or whether the Selectmen voluntarily agreed to place the Article in the Warrant. If it is included as the result of a petition, then the language must be retained as-is. If it is included voluntarily, then the Selectmen might consider a few changes to the proposed amendments. First, the Selectmen should consider whether hotels will be an allowed use (as proposed) or as a special exception. Second, they might consider a definition that better distinguishes hotel from Bed and Breakfast Inn. Finally, the Selectmen might consider whether hotels should be allowed in the Island Business District as a whole, instead of only on this one small parcel. Currently, hotels are not permitted in the Town at all, nor are Bed and Breakfast Inns with more than three guest rooms. Allowing hotels and/or bed and breakfast inns as a special exception would allow for heightened review while still permitting the uses.

In conclusion, we are of the opinion that the proposed amendment to the zoning Ordinance is not illegal spot-zoning because the proposal is not inconsistent with the town’s Comprehensive Plan.

PDL/lh
May 21, 2014

VIA ELECTRONIC MAIL

Town of Chebeague Island Selectmen
c/o Eric Dyer
Town of Chebeague Island
192 North Road
Chebeague Island, ME 04017

Re: Response to letter dated May 20, 2014 from Town of Chebeague Island Planning Board addressed to Town of Chebeague Island Selectmen

Dear Chair Damon and the Board of Selectmen:

Last night, along with our legal representative, Brian Rayback, we attended the Planning Board’s public hearing to discuss the Inn’s proposal to create a new IB2 district in the TOCI Zoning Ordinance that would allow the hotel aspect of our business to be a permitted use.

We heard comments from the public and the planning board that were both in support of, as well as against, the Inn’s proposal for a variety of reasons. As you know, the Planning Board recommended by letter that the Selectmen decline to place our proposal on the warrant for Town Meeting, concluding that the Town should not even have the opportunity to vote on the idea. In that letter, the Planning Board states that its decision was based on the following factors: 1) the timing of the Inn’s proposal; 2) the legality of our proposal (in spite of the clear advice of the town’s legal counsel to the contrary); 3) compliance with the Comprehensive Plan; 4) what they call “piecemeal” zoning changes; and 5) the availability to the Inn of other avenues to expand the facility. I would like to quickly address each of these points in order.

1) Timing of the Inn’s proposal
   We have discussed our desire to amend the zoning ordinance on numerous occasions with various town officials dating back at least to last summer. Our requests have been in the form of conversations with Eric Dyer and Beth Howe, causally with Selectmen, and officially via letters submitted to the Selectmen asking them to take up the issue. However, the need for this revision became a real problem this past fall when our permit application for a project designed to improve the lobby, including by making the Inn handicap accessible, was denied because our use was not permitted. Based on our reading of the ordinance, we had not anticipated that result. Facing the uncertainty, cost, and delay of a special approval from the Board of Appeals – both now and for any similar project in the future – prompted us to accelerate the process in a more orchestrated fashion, including the hiring of an attorney to prepare draft
language. Our understanding, through discussions with both Eric and the Selectmen, is that we are following the process set out in the ordinance for amendments, and thus that we are complying with any requirements about timing.

2) The legality of our proposal

Five weeks ago, our land use attorney from Pierce Atwood gave Beth Howe and Eric Dyer an analysis, including copies of Maine court decisions, that demonstrated why our proposal was not illegal spot zoning. Furthermore, the Town of Chebeague Island’s attorney also reviewed our proposal on behalf of the Town and came to the same conclusion as Pierce Atwood. During the portion of the meeting that we attended last night, it seemed that the members of the Planning Board had accepted that opinion. Therefore, it is not clear to us why this continues to be an issue for the Planning Board, and suggest that it should not be an issue for the Selectmen.

3) Compliance with the Comprehensive Plan

The comprehensive plan is a large, flexible document with many sections. While the Planning Board believes our reading of the document is “narrow,” we believe (as did the Town’s legal counsel) that our proposal is consistent with the comprehensive plan. Recognizing the hotel aspect of our operations, which has existed since the 1800s, as a permitted use would not bring significant change to the Island, or somehow upset the rural residential character of the Island, as some members of the public seemed to suggest last night. Our proposal is intentionally focused on a single parcel to ensure that the impacts would be limited. At the same time, we believe it is clear in the comprehensive plan that the Town wants to support its businesses, promote mixed uses, and eliminate barriers to economic development.

4) Piecemeal zoning

We recognize the desire expressed by some people last night that the community as a whole should address its larger concerns about the zoning of the Island, and thus avoid “piecemeal” amendments. In reality, however, the Town has never acted on those concerns, as expressed in the comprehensive plan, and it is unfair to ask anyone who seeks a targeted amendment to wait, in hopes that a wholesale revision will someday occur. The Inn’s request is simple and straightforward and needs to be addressed for us to continue to invest in the community and address the economic viability of our business.

4) The unwillingness of the Inn to pursue avenues available to us

Again, with all due respect, the process of seeking a zoning amendment IS one of the avenues available to us. We have outlined a variety of reasons why we believe this is the best option for us. This avenue DOES NOT remove any of the standard permitting processes that the Planning Board is designed to handle – it simply would make the Inn be treated like any other legal business on the island.

The Inn requests that the Board of Selectmen continue the public process by including the requested change on the warrant.

Sincerely,
Casey Prentice