

**MINUTES
FREEPORT PLANNING BOARD
FREEPORT TOWN HALL COUNCIL CHAMBERS
WEDNESDAY, SEPTEMBER 1, 2021
6 p.m.**

Present: Robert Ball, Rosemary Burwell, Aaron Cannan, Anna Child, Wayne Jortner, Chair Sam Kapala, and Caroline Pelletier, Interim Planer
Excused: Greg Savona

Call to Order: Chair Kapala called the meeting to order at 6:03 p.m.

ITEM I: Information Exchange

1) Update on recent actions by the Freeport Project Review Board

Ms. Pelletier advised that the Project Review Board continues to be very busy. The Board created that Nature-based Art Overlay District for the Desert of Maine. They came in for a change of use that was permitted under that new regulation and a site plan amendment. They will be putting in a mini golf course and they did get approval to do that. Downeast Woodwork on U.S. Route One South came for a conceptual presentation for an 1,800 sq. ft. addition. They will probably come back next month. Wilbur's of Maine came for a Design Review Certificate. Linda Bean's Topside at 88 Main Street have to slightly adjust the design for the second level of the addition where they are taking down the ATM. They made some material changes and tweaked the outdoor seating and what was previously proposed to be a glass ceiling on that section of the building. Nighthawk Kitchen who has a food truck down next to Mast Landing down at Freeport Crossing. They came for a Design Review Certificate. They will be the restaurant occupying that small space there. They got approval for signage, some screening and some outdoor alterations for a little outdoor seating. Foiled Hair Salon will be going in next door. They got a change of use for the space that was formerly the Green Gourmet. They will open a hair salon in there. We did have a renewal of an approval or an extension for the Denney Block. Years ago, with the contract zone in process, they were going to do an in-fill building between Vineyard Vines and Sperry. The approval lapsed. They got their approval and were getting ready to start and then we had a pandemic. They got their approval. Design Review can extend for a year and the Site Plan can be for two years. Finally, there was another conceptual for change of use and Site Plan amendment for Mr. Tuna and Goodfire Brewing. They will be occupying the corner of U.S. Route One South and South Freeport Road. where El Jeffe and Conundrum were. The Project Review Board also talked about the Remote Participation Policy and the joint workshop with the Council. They are interested in that but have a vacancy and do want to wait for that vacancy to be filled and they think it will be early next month.

Chair Kapala noted that was a lot of projects for one meeting.

ITEM II: Public Hearing – Proposed Amendments to the Freeport Zoning Ordinance (pertaining to Shoreland Zoning)

This will be a public hearing to consider proposed amendments to the Freeport Zoning Ordinance pertaining to State mandated Shoreland Zoning regulations. All new proposed changes have been drafted to align with the State's minimum requirements.

Chair Kapala noted these are changes that are originating from the State, not members of the Board. This whole exercise is to bring the Town's ordinances up to State requirements. He wanted to put that out there right off the bat. Text amendments are proposed to the following sections: Section 104. Definitions; Section 201. General Restrictions; Section 202. Non-Conformance; Section 203. Changes and Amendments; Section 302. Zoning Map; Section 303. Zoning District Boundaries; Section 304. Map Corrections - Shoreland Zone and Resource Protection District (to be repealed); Section 401. Purpose and Land Use Controls; Section 402. Rural Residential District I and Rural Residential District IA; Section 403. Rural Residential District II; Section 409. Commercial District I; Section 422. Industrial District II; Section 426. Island District; Section 507. Shoreland Zone Regulations; Section 601. Enforcement; and Section 602. Site Plan Review. Some additional non-substantive text amendments are proposed throughout the Ordinance to correct typographical errors and to incorporate gender-neutral pronouns.

Note: Mike Morse from Morse Environmental Consulting, LLC will be present to give an overview of the proposed updates. If you have property specific questions, please contact the Codes Office 207-865-4743 ext. 102 prior to the meeting.

Ms. Pelletier advised that the State last amended the Shoreland Zoning regulations in 2015. In 2019 the Planning Board at the time and Staff had a public hearing to incorporate the same language into our Zoning Ordinance. It was then sent to DEP for preliminary review and we were advised that it needed significant additional changes to be compliant with Shoreland Zoning. We started that process mixed in with a few other things, had a pandemic and we brought in Mike Morse from Morse Environmental Consulting to assist us with this project. He has a lot of experience working with DEP and Shoreland Zoning so he was able to work with Staff and insert the language we needed to have into our Ordinance. Our public has been waiting for this. There are changes that do impact some people in a positive way here. One of the things we will get into when we look at the map, is that quite a few people are coming out of Resource Protection. There are a lot of areas that were Resource Protection for habitat. Being in RP-I, you really can't do anything with your property. She apologized for the delay that it has taken us to get to this point. We have the whole package here and we are confident it was done correctly this time as far as process. State mandated we have to make our language comply. We have to have a hearing at the Planning Board. They have to make a recommendation and a finding that they believe it is consistent with State Shoreland Zoning Regulations. They would send it to the Council and the Council would have a similar public hearing process. We would then send it to DEP and they have 45 days to review and approve it and give us any additional feedback back. We do have Mike Morse here tonight. He was prepared to give the Board a fairly brief overview of the 275-page document before you. A lot of the changes that people have been most interested in and had the most inquiries on seem to be the non-conforming use and structure section and then tree cutting and impervious coverage on lots. He will give an overview on that and then he will answer questions. The Board can open this to the public as long as it is not property specific, he will be able to answer questions for the public as well.

Mike Morse explained that he is the president, the CEO and Janitor of Morse Environmental Consulting. He was contacted by the Town to assist with drafting changes to the Shoreland Zoning section of the Town's Ordinance. Some of the Shoreland Zoning is specifically contained in Section 507 of the Ordinance but there are other Shoreland Zoning provisions mixed in throughout the rest of the Ordinance. His objective was to prepare the draft in accordance with the State minimum standards as

Caroline pointed out. The State standards were amended by the Maine DEP through a rule-making process in 2015. There have also been several statutory changes enacted by the Legislature since 2015 and those have also been incorporated into this draft. Mr. Morse noted that his target is to give the Board a 20-minute update on some of the highlights.

His first comment that he wanted to mention is that these changes are State driven for the most part. There are a few other standards cleaned up in here as well because they were either inconsistent with some of the State language or they are archaic and no longer really applied. Overall, this is just to make the Ordinance comply and consistent with State standards. He asked the Board to note that if they don't appreciate some of the State standards, he does not work for the State and he is not to be held responsible for those State standards but would be happy to answer questions related to these. In terms of format, he asked if he should proceed and go through everything and touch on the highlights or if the Board wants to stop in between if it has questions. He mentioned he could do it either way and can always come back to things if the Board has questions. He left it up to the Board.

Chair Kapala suggested going through the highlights and if Board members have urgent questions and it seems like they need immediate qualification, we will stop here. Mr. Morse referred to Section 104 and deemed it one of the easiest sections to discuss tonight. In the definition section there are some additions and revisions to the definitions to meet State minimum standards. Some of these State minimum standard definitions and some of the other language we will talk about this evening will also help with the administration and enforcement of the Ordinance. By who? By Town officials, the Codes Enforcement Officer, the Planner and the various boards such as the Planning Board, Appeals Board, etc. There really isn't anything overly significant to talk about the definitions from his standpoint so he moved on to Section 202 which is Non-conformance. Within the Non-conformance section various changes have been implemented into the draft document the Board has in front of you. He will highlight several of these changes now in the Non-conformance Uses Section. There are changes again, just for consistency with State requirements related with what can be done with a non-conforming use if it is discontinued, going to be expanded, etc. Perhaps one of the most stimulating topics we will tap into tonight is expansions of non-conforming structures. He explained that non-conforming structures have been afforded the right or opportunity to be expanded. Non-conforming structures being structures for Shoreland Zoning purposes that don't meet the minimum shoreline setback in particular. There may also be other non-conformities for structures such as a structure that exceeds the height limit. For the most part, what we will be discussing now is the non-conforming structure expansion with limitations for a structure that is too close to the shoreline. For many years the State, the Town of Freeport and every single municipality in the State have restricted expansions of non-conforming structures using two specific metrics. Specifically, floor area and volume so each structure has floor area in terms of how much floor space you have within a structure. For Volume, think about a cardboard box with four sides, a top and a bottom. There is volume inside of that. Those are the two metrics that were used for years and years in order to restrict expansions to various non-conforming structures. This was implemented January 1, 1989 at the State level and adopted into ordinances sometime shortly thereafter.

In 2013 the Legislature was asked to revisit these expansion metrics, floor area and volume for calculating expansions. By the way, the expansion area for floor area and volume was no more than 30% of a floor area and volume of a structure that existed on January 1, 1989, the date it first took effect. In 2013 the Legislature revisited this for various reasons, particularly volume calculations were fairly difficult. As he mentioned, picture a cardboard box with four sides, a top and a bottom. It is simple to calculate volume in that. However, volume expansions on some of the more complicated looking structures we have out there today, it gets to be a bit more onerous. It is challenging not only for the

landowner but for enforcement staff reviewing an application or perhaps the Planning Board reviewing an application. The Legislature working with DEP Staff at the time ended up developing a totally different way of approaching restrictions to non-conforming structures using two new different metrics specifically footprint and height. Height is self-explanatory. It is the height of the structure excluding chimneys, steeples antennas and that sort of thing. Footprint on the other hand is a snapshot of the structure on the ground. It does not take into consideration how many floors you have, whether you have a basement, whether you have crawl spaces, whether you have space upstairs between knee walls in a structure. It simply looks at the footprint of the structure on the ground which includes overhanging extensions, patios decks and that sort of thing. The simplest way to describe how this is implemented is to consider it as this pier expansion process so the further back from the shoreline the structure is, the greater expansion can happen to the structure. For example, within 25 feet of the shoreline, a structure either cannot be expanded or there is a caveat that allows for a structure to be expanded up to 800 sq. ft. and 15 feet in height. 15 feet in height limits you to a one-story structure obviously or 30% of the footprint that existed on January 1, 1989, whichever is greater so there is that piece to it as well. If you move back to areas greater than 75 feet to the shoreline, you are allowed to expand up to 1,500 sq. ft. versus the 800 and increase the structure height up to 25 feet. This is DEP and the Legislature's way of trying to control volume and floor area expansion without having to deal with volume and floor area frankly. The idea is that it is much simpler and straight forward but Mr. Morse would not claim that the language is necessarily 100% simple to apply to a given project. Some projects, yes, but other projects not as much but overall, it is a simpler method to consider expansion.

NOTE: Anna Child arrived at 6:20 p.m.

For those wondering what does this do in terms of their project. They have a house on a road next to the ocean, can they expand more or expand less with this provision? The State's Legislature and DEP's intent was to be neutral on that respect and not to make it more restrictive or any less restrictive. The reality is from his experience as a consultant is that he has seen greater expansion capability being afforded landowners under this newer set of standards but not in all cases. If there are landowners here who are wondering about their own property, they will have to evaluate that yourselves. Generally speaking, it tends to be a greater allowance for a larger expansion. There are still limitations but it is a different way of doing this. Also of note, there is a provision that specifically allows for expansions of structures in a Resource Protection District identified on your Shoreland Zoning Map which here in Freeport is not overly extensive. It clearly allows for expansions within the Resource Protection District. The Town of Freeport according to the State does not have a choice. Freeport has to adopt this into its language. In fact, the State already applies these standards to a project within Freeport because it is a State law provision. This is in addition to Freeport's current floor area and volume metrics that are also being applied. The reality of this is today, if somebody comes into the Town with an application to expand a non-conforming structure, they have to consider all four metrics, floor area, volume, footprint and height. The last two are to accommodate the State. With this change, Freeport will at least be rolling it back to two metrics consistent with the State.

Foundations under the Non-conforming Section of 202. Again, there has been a slight movement from having foundations underneath the heading of Non-conforming Expansions has moved to its own separate subsection and to comply with State requirements. Also, in the Non-conformance Section the last point he wants to discuss on that section tonight is the Non-conforming Lots Section within the Shoreland Zone. Again, just the changes are to correct some deficiencies within the current ordinance.

Moving on to Section 304, Map Corrections, that is proposed to be deleted or repealed from the Ordinance. The simple basic most fundamental reason for that is that this provision currently affords the opportunity to the Planning Board of the Town to administratively amend the Zoning Map that was legislatively adopted by the Town Council. There is a question of legality there. Is that really legal or is it not? His understanding in the past has been that it is not a legal process. He does not claim to be an attorney and will not sort it out for the Board but it is slated for removal. Ordinarily with any ordinance amendments or map amendments, there is a required legislative process. You have to go through this legislative process and go to the Planning Board, just like these amendments here tonight and eventually to the Town Council for adoption. Section 304 was deemed to be inconsistent with State standards and might have presented a legal problem as well.

Moving along to the Shoreland Zone regulations in Section 507. As he alluded to earlier this is kind of the meat and potatoes of all the Shoreland Zoning Standards minus some of these other provisions we already talked about, definitions and non-conformance. Caroline mentioned the proposal to remove moderate/high value waterfowl and wading bird habitat areas in Section 507.F.1. It is the establishment of a District Section. This proposal is consistent with State minimum standards in May, 2012. The Maine DEP amended its own State Shoreland minimum guidelines to eliminate that requirement. There was some amount of redundancy in the Shoreland Zoning requirement for these waterfowl and wading bird habitat areas to be protected and in a different State-wide administered by the DEP which is the Natural Resource Protection Act. The reason the State removed this from the Resource Protection zoning under Shoreland Zoning and we are proposing to do this tonight in the current revisions is because under the Shoreland Zoning standards, if you have a property in Resource Protection, there is very limited ability to ever be able to build a house or any structure or conduct any vegetation removal within the Resource Protection District. It is almost a flat out no, you can't do that because it is still in Resource Protection for this 250-foot zone. These waterfowl and wading bird habitat areas are established on a map by the Maine Department of Inland Fisheries and Wildlife as you might expect. Under the Natural Resource Protection Act review, for similar projects adjacent to these waterfowl and wading bird habitat areas, under the DEP's review, they have the ability to consult the MDIF&W biologists who monitor and map these areas and ask them if this project is okay to happen within 250 feet of this coastal wetland edge? Is it okay to be less than 250 feet? They will analyze this on a lot-by-lot basis or a case-by-case basis and in many cases where we are seeing Fish and Wildlife, the very agency that was mapping these areas saying no, we could live with a 150-foot setback, or a 100-foot setback or a 75-foot setback. Again, on a case-by-case basis when an application rolled into the door at DEP, if the agency that maps these areas and wants them protected was okay with considering these applications on a case-by-case basis, then why would we be so ultra-restrictive on Shoreland Zoning so DEP ended up saying let's remove this from Shoreland Zoning and let the NRPA review it at DEP on a case-by-case basis. There is still local zoning that will apply to these areas in Shoreland Zoning. There will still be a 250-foot Shoreland Zone but the setback won't be an automatic 250 feet. The setback here in coastal areas is 75 feet so it would be down to 75 feet but then again through DEP's review within the 250 feet of the waterfowl and wading bird habitat, it is determined that to protect the waterfowl and wading bird habitat there really needs to be 150-foot setback, then that is what will be applied as well. That is the Resource Protection waterfowl and wading bird habitat change in a nutshell.

Table One under Section 507 is the Table of Land Uses. Again, there are just several deficiencies in there and several omissions that needed to be adjusted or corrected to comply with State minimum standards and also would really benefit the implementation and administration of Shoreland Zoning.

Moving on to Section 507.H.3, this clarifies lot coverage in the Shoreland Zone. Again, as the original language became inconsistent and out of compliance with the State minimum language, the language that has been added is significantly the same as what Freeport currently has in the ordinance with several exceptions. One is that it now includes driveways be included towards lot coverage but it also incorporates two exemptions. One is for public boat launch facilities. If the Department of Conservation, Marine Resources, Fish and Wildlife, the Town of Freeport or somebody coming in wishing to establish a boat launch, and somebody is willing to donate a free piece of land or a low-cost piece of land, often times throughout the State it was realized that these pieces of land were very small so a town or the State couldn't put in a boat launch without automatically exceeding the 20% lot coverage limitation. That is why that was removed. The other exemption that has been incorporated in the new language for lot coverage is an exemption for naturally occurring ledge and other rock outcroppings for lots of record on March 24, 1990 and that was the date for the lot coverage standards first came into effect at the State level. It is not intended to allow someone to go in with a backhoe and scrape up all the soil down to ledge and get rid of it and create something like that. Again, naturally occurring ledge and rock outcroppings.

Section 507.H.8 adds a provision to allow for low retaining walls in certain areas used for landscaping purposes. It is pretty simple. DEP had to also include some language for planting some native vegetation or some type of vegetated buffer between the wall and the shoreline and minimum setbacks. It is intended to allow folks with a lot of bare soil in their yard or a grass lawn to be able to add a low retaining wall up to 2-feet in height and level off an area a bit to make a nice landscaping improvement and seemed to be pretty innocuous environmentally.

Section 507.Q is proposed for repeal. This is for timber harvesting within the Shoreland Zone. Timber harvesting was actually repealed by the Town of Freeport subject to a certain timing provision for the repeal to occur. That timing has already happened and occurred several years ago so now we are simply deleting that language from the ordinance. Technically, that language could be deleted on its own without needing to go this process of formal adoption of an amendment process. It has already been decided by the Town and this is just a deletion for that.

Section 507.Q was formerly 507.R and is the clearing of vegetation for activities other than timber harvesting within the Shoreland Zone. There are a few minor changes there. The plot size for how you measure what can be removed for trees within this 75-foot or 100-foot buffer adjacent to the water is increased from 25 feet by 25 feet to 25 feet by 50 feet which is actually better for landowners. It is much simpler for a landowner to comply with this revised plot system because there are natural conditions that did not meet the minimum points of trees in the smaller plots and the distribution of the plots was kind of crazy. This is intended to be an improvement for landowners. There is some language that adds clarity to how these plots are laid out and how this point system is applied. There are some other housekeeping changes within this section as well for consistency with the State's minimum standards.

Three new sections have been added to the Ordinance. They are 507.R, 507.S and 507.T and are also related to vegetation in the Shoreland Zone. 507.R relates to hazard trees, storm-damaged trees and dead trees. This is a new set of standards adopted by the State in 2015 mainly because the older language the Town probably has in its current ordinance missed the mark on helping folks to understand what is a hazard tree, what about a storm-damaged tree, what about a dead tree? How are these treated? This doesn't necessarily represent much of a change but there are some changes and additional provisions within this but ultimately it clarifies what can and cannot be removed. What is a hazard tree? What is a storm-damaged tree? When can you remove it without penalty? When can you

remove it without having to replant? It is actually a huge improvement for the Town and landowners in his opinion.

Section 507.S contains exemptions to the vegetation removal standards. This section is new but it is a compilation of a number of existing exemptions that were already in Freeport's Ordinance and the State's minimum standards. It is compiled in this one section so that somebody could look at it and say, oh this is an exempt activity from the clearing. There are several new exemptions built into this section as well. Oil spill clean-up for example, hazardous waste clean-up, an auto accident or a heating oil truck rolls over while filling a heating oil tank next to the ocean and they have to get in there to remove the soil. For years everybody said that is fine, go ahead and do what you have to do but technically it violated the standards. This clarifies that they have the right to go in and clean up something that will do far more damage to the water body that is trying to be protected. Also included in this exemption section is an exemption for maintenance clearing. This clarifies what this is and establishes it as a clear exemption for landowners. Also included in this section is an exemption for the removal of non-native invasive plant species. These are listed on a very specific list by the Department of Conservation Maine Natural Areas Program where they have identified non-native and invasive plants. There is some oversight and the vegetation needs to be submitted to the CEO for review.

Section 507.T includes some re-vegetation requirements. This is also new and incorporates what had been longstanding policies for what needed to be replanted for certain situations such as what about the replanting about an oil spill clean-up? What about replanting for a violation that occurred? What about replanting for a bunch of hazard trees that had to be removed so someone would not have their house destroyed? There are re-vegetated requirements added into this draft ordinance and it is all consistent with the State's minimum standards. He wanted to be clear that these standards are helpful for landowners to know what they can do and what they can't do but it is also helpful for the Town. He feels the Codes Enforcement Officer will field 99% of those questions of what can I do or what can I not do? He will have something to point to in an ordinance to say follow this or follow that. You are good to go. If someone has fired up his chainsaw prematurely without asking the question, what can I do or what can I not do? It gives the Town a little more support for pursuing that and whether it is just revegetation and plant a few trees here and call it a day or maybe it is something more significant. The State implemented a lot of these standards on the basis that it was realized for quite a while that vegetation removal violations are probably the greatest number of violations a town is going to have to deal with so they tried to help landowners understand by clarifying the language and also help the town in its administration and enforcement.

Section 507.V includes a provision that allows for shoreline stabilization. Effectively, all that's really trying to point to is the key point that it allows for vegetation removal to occur within the shoreline buffer in order to conduct a shoreline stabilization project. As you might expect, there are certain limitations and some replanting has to occur but otherwise without this provision, one could argue that you cannot do a stabilization project if you have to remove any vegetation in excess of the vegetation removal standards and at some point, people have to recognize that the landowners should be able to stabilize their shoreline so they don't lose their land and potentially do not lose their home that is sitting on top of the slope. That is a provision that allows for vegetation removal to conduct that type of project.

Section 507.Y is a section with a number of sign standards. They are new for Freeport but they are not new to the State. They have been in the State's requirements for many years but the Sign Ordinance standards for the Town of Freeport were not fully consistent with the State's minimum requirements for

signs within the Shoreland Zone. This Section 507.Y adds Shoreland Zoning sign standards to the ordinance to comply with State requirements.

Section 507.2.Z and Z.2 D incorporate two law provisions, statutory changes that were enacted by the Legislature in the past few years. One is that an excavation contractor conducting their work within the Shoreland Zone must be certified by the DEP for erosion control best management practices. They have to take a one-day course and demonstrate to the DEP that they are capable to conduct work within the Shoreland Zone without having a disaster erosion into the resource when a thunderstorm hits or a hurricane. Contractors have to be certified. This is not a recent law change; it is something that came about in 2011 or 2012. He is unsure of those dates but is aware that it has been in place for quite a few years. There is a grace period to give contractors sufficient time to take the course and get certified before this was actually being implemented. It has been implemented in all towns for a bunch of years so instead of the Town relying on it being a statutory requirement, it is now formally being added to the Town's Ordinance. With Z.2.D there is a photographic record required with applications and Mr. Morse thinks it is the Legislature's attempt to control what is being removed for vegetation. They want to see photos before and after and they will have a record in their Municipal files so they know what it looks like. Five years from now, if they go down and it looks like a lawn down to the water, they can refer back to the photographs and say, wait a minute, you are going to have to do some replanting.

His last comments are related to Sections 601 and 602. These are really the administration sections. and there are a couple of minor changes. There is a State requirement that when there is a variance issued by the Board of Appeals, there is a reconsideration option built into that language as well so somebody could request if the Board grants a variance, they could request a reconsideration of the Board of Appeals and there is a process related to that. In Section 602, Site Plan Review, there are some environmental review standards to be consistent with State standards and they are fairly general standards. That is all Mr. Morse had for the highlights. He offered to field some questions

Ms. Pelletier wanted to point out a couple of things before the Board takes public comment. First, Mr. Morse mentioned timber harvesting and how we are removing those standards. If somebody is doing timber harvesting as defined by the State, they would get a permit from the State. Staff reached out to the State's Forest Service. They did review the language and felt that that has been adequately addressed with the proposed language in front of the Board. Second, mixed in all of this in Section 601 there was a note that if the Board recommends this text, the amendments to Section 601 would need to get flagged to the Council so they can get it incorporated into the new Board of Appeals language that the Board recommended at the last meeting. The Board had a couple of text changes on the table tonight that she wanted to point out from what was posted on the website and what was in the huge stack on the table. On Page 47, Section 202.B under Non-conforming Uses, although the Board was not changing the standards, there was a standard existing that says a seasonal use shall not be converted to a year-round use. While that is lovely, it doesn't define anywhere what a seasonal use is. In prosthesis the text would add: as defined by the Maine Subsurface Waste Water Disposal Rules. On Page 48, Non-conforming Structures, there was a little note that paragraph was inadvertently omitted years ago and was added back in 2017. It is to add the word omitted back in there. On Page 145 under Resource Protection, there is a date specific reference with regards to the areas in the flood zones. We have a certain set of FEMA maps from 1985. They have been talking about amending them for years. Should they do that, it could be some changes with notification required so we want to put a specific date in there as to what maps it is referring to. The same thing would be suggested on the map which we will get to. On Page 160 there was an omission of part of a sentence regarding determining the area

regarding tree removal. It should be 25 by 50 for a rectangular area. Those were just some clean up and she would welcome other suggestions if the Board found any during their reading.

Chair Kapala found that the omission of the word omitted might have been an inside joke and he liked it. He asked if Ms. Pelletier knew what the definition of a seasonal use is under the Maine Subsurface Waste Water Disposal Rules? Ms. Pelletier advised that it refers to the septic design that is on file for that property that identifies how it was used at a specific point in time from 1977 to 1985. Chair Kapala asked if you have a house with a septic system that was permitted way back then that was adequate for two bedrooms three months a year. Ms. Pelletier advised that this is only in regards to non-conforming uses so places where you might have a two-family that is not permitted today, really where we had most of that was in the Resource Protection I District and you couldn't build a house today. If you had a single-family home there, it was non-conforming. This would apply to a case like that. It wouldn't apply to every house in the shoreland Zone, just places where the dwelling is a non-conforming use.

MOVED AND SECONDED: To open the public hearing. (Cannan & Jortner) **VOTE:** (6 Ayes) (1 Excused-Savona) (0 Nays)

Joyce Veilleux of Island View Lane mentioned her question is on Page 149 and it has to do with the non-vegetative surface not being more than 20%. It is obvious that whoever wrote this has not been down to the Flying Point area where they have lots that are 50' x 100'. This is going to make a big difference to what they can or cannot do. It will limit them more than the fact that they can only expand by 800 sq. ft. and 19' high and all that good stuff. She believes the Town will find that the State and the DEP allow for an appeal to this so she thinks it should be added to the list of things that can be appealed to the Town's Board of Appeals which is Section 601. It currently is not listed there.

Ms. Pelletier added that they did run legal ads and sent out over 800 notices. Chair Kapala agreed there are a lot of parts of Freeport in the Shoreland District.

Ethan Parker of South Freeport mentioned Page 22 under Increase of a non-conformity of a structure. The result of this seems like it is allowing but maybe this is not the intent. This is kind of a question and a concern at the same time. If you have two pieces of property on the shoreline right next to each other, and the structures are identical to each other but one structure has a deck that goes over and extends into the setback line, it seems like this section is saying that the width of that structure can be increased out to the existing non-conforming deck does. If he is right about that, he will keep going. If he is wrong, he won't waste the Board's time. To his mind that seems to violate the intended spirit of Shoreland Zoning because if he has a house that is right up against the setback line and he would like to have that deck out front but his neighbor already has that deck out front and he or she can expand that deck to the full width of their property and he can still not do anything. He is not advocating that he would like to be able to extend into that setback just like his neighbor could. He is just saying why don't we limit that neighbor to the non-conforming use they already have and not grant them the included benefit of being able to expand even more.

Mr. Morse explained that Mr. Parker is correct. A deck is considered to be part of a legal existing structure whether it is non-conforming or conforming. The non-conforming structure standards would apply to the deck just like the rest of the house. The structure could not be expanded to be any closer to the shoreline than the closest point of the structure because presumably that example the deck, but it could expand laterally. Some of that language was added to allow for these in-fill expansions as a result of a court decision back in the late 90s or early 2000's but it would allow for that. It is under the State's

minimum standards and could be more restrictive if the Town would like to be. Chair Kapala added that those benefits would be incorporated into the value of the house. He could see Mr. Parker's point. It seems like it is part of the reality of homes on the water. Some are closer than others and it is complicated.

Ms. Pelletier clarified that what Mr. Morse is saying is that the percentages or footprint increase are still going to be applicable in a non-conforming structure so you can't just add what you want for that area. Chair Kapala noted the key point is that a house that is right up against the setback but not in it cannot expand into the setback even a little bit because it would increase the non-conformity of that house. What on the surface seems like two very similar and you have a have and a have not and no means by which to close that gap.

There were no other public comments received.

Mr. Jortner asked Mr. Parker if this is theoretical or is this an active issue? Mr. Parker replied that it is mostly theoretical at this stage

MOVED AND SECONDED: To close the public hearing. (Cannan & Jortner) **VOTE:** (6 Ayes) (1 Excused-Savona) (0 Nays)

Chair Kapala thanked everyone for coming this evening. He asked for the Board's thoughts.

Mr. Cannan thought this is a substantial edit to our ordinances and great work by the Staff and everybody involved. It is overall a good refinement to our ordinances that makes us consistent with State standards and nothing is too offensive to him as he read through them. Chair Kapala felt the first comment about listing the lot coverage requirements as part of the appeals seems like it is fairly straight forward. He asked Ms. Pelletier if she could speak to the technical aspects a little more. Ms. Pelletier advised that the Board could incorporate that into the changes before you tonight. If the Board does that, it will have to flag to the Council that it needs to be flagged into the pending language. At the last meeting, having language makes our Section 601 pertaining to the Board of Appeals and Enforcement consistent with State law. The options in there are going to be a variance in which case you need to prove hardship. A variance for a single-family which clearly calls out you can't do for lot coverage or a disability variance, so if you are going to add that coverage, the only place you could add it would be under the variance provisions. It does add an option but variances are really hard tests to meet. There are four or five different standards you have to prove that you meet hardship and essentially have no other use of the property. It is a difficult test but at the same time, if you don't put it in, there is no option. She thinks that everybody is aware that a variance is the only option and it is a hard choice. It would involve going to the Board of Appeals. Anything they did in the shoreland, we would have to notify DEP and they would have to sign off on it. In 252, second sentence down she would say, maximum building/lot ratio, lot coverage, and then it goes on to parking requirements. Chair Kapala asked if the State would use a different method like a scaled method in determining lot coverage if the lot is not big enough? Ms. Pelletier advised that there are no exceptions to that rule.

Mr. Cannan found a typo in the definitions of campgrounds proposed language. He feels there is an *is* that should be an *in* on Page 13. He asked Mr. Morse if most coastal towns have already adopted the State changes from 2015 or is it difficult to say? Mr. Morse noted not being a DEP employee, he can only speak from his experience as a consultant and would say that most coastal Southern Maine towns have

gone through this process. Ms. Pelletier believes there is talk of additional amendments that might come from DEP in the near future. Mr. Morse agreed there are lots of rumors floating around but his understanding is that there has been some discussion about it but it hasn't been made clear to him that they are actually going to move forward with that process right off.

Ms. Pelletier advised that if the Board wanted to make a motion on this tonight, to make a recommendation to the Council, you should specifically note the date on the document and incorporate any amendments presented at the meeting. Your finding would need to be that you find it consistent with the State's Shoreland Zoning and also reference to the Comp Plan or whatever else you want to do. With Shoreland Zoning we really need to be consistent with the State's regulations. The map and the Zoning Ordinance are two different documents and there are two separate public hearings you will need to take up.

MOVED AND SECONDED: That the Freeport Planning Board recommends changes to the Town of Freeport Zoning Ordinance as proposed dated September 1, 2021 as amended with attachments included for members in the public tonight. The changes relate to the following sections: Section 104. Definitions; Section 201. General Restrictions; Section 202. Non-Conformance; Section 203. Changes and Amendments; Section 302 Zoning Map; Section 303 Zoning District Boundaries; Section 304. Map Corrections – Shoreland Zone and Resource Protection District (to be repealed); Section 401. Purpose and Land Use Controls; Section 402. Rural Residential District I and Rural Residential District IA; Section 403. Rural Residential District II; Section 409. Commercial District I; Section 422. Industrial District II; Section 426. Island District; Section 507. Shoreland Zone Regulations; Section 601. Enforcement; and Section 602. Site Plan Review with the noted addition from Joyce Veilleux relating to the appeals to the lot coverage vegetation and the edit to the typo in the Campground definition changing "is" to "in". It is consistent with the spirit of the Town's Comprehensive Plan and consistent with protecting our shoreland zoning areas and being environmentally responsible. (Cannan & Jortner) **VOTE:** (6 Ayes) (1 Excused-Savona) (0 Nays)

Chair Kapala thanked the members of the public for coming out tonight.

ITEM III: Public Hearing – Proposed Amendments to the Official Zoning Map for the Town of Freeport (pertaining to Shoreland Zoning)

The boundaries of the Shoreland Zone, as regulated by State law, will be updated. Many areas previously designated as Resource Protection 1 are being amended to "shoreland area". Areas within coastal flood plains will remain in Resource Protection however will not be shown on the map, as the boundaries will be based upon the FEMA (Federal Emergency Management Agency) Flood Insurance Rate Maps, as adopted by the Town Council.

Note: The proposed map also reflects any other zoning amendments already approved by the Council, but not currently reflected on the Official Zoning Map.

Ms. Pelletier explained that she provided a copy of the map online and offered to put it on the screen if needed. She credited the Assistant Planner for this very technical and detailed map. She put a lot of time into it. Back in 2013 when we last did Shoreland Zoning, we digitized our Zoning Map but haven't really updated it since then. We did a little clean up. This map shows the VR-I District which is in the area of

Cottage and Forest Street, the Nature-based Art and Overlay District. A year or two ago we made an amendment to the map to remove the coastal bluffs so the Board actually has to go to the data source of the Geological Survey Maps because we found that we were not keeping up our data and people were taking unstable bluffs that were not identified on their property but we still showed them so it was a limiting factor for our property owners. With regards to Shoreland Zoning, the intent was that a lot of the data stayed the same but we did meet with the DEP and we did have to do some clean up to draw things correctly. The biggest change before the Board which we already talked about, is the fact that we can take out a lot of that protected bird habitat out of Resource Protection I and into Shoreland Zoning. It used to be very restrictive and in dark blue. Now it has the blue hatch line over it. The second change is we did have to clean up the way the streams were shown and the boundaries of the wetland. The standards were still in effect and the rules were still the same but they were not drawn correctly so we did have a little bit of clean up mostly at the ends of the streams. The Board will notice that the shape around Florida Lake was corrected. There is one area in the amendment package before the Board tonight. On the top left, it is so small you can't see it but whoever owns that property it will matter to them. It is shown as Shoreland Zoning but it does not need to be. It is up on the Durham line and is shown by a little blue hash mark there. It can be removed. The other change the Board will see here is when you look at the old map along the coast line there is a thin blue line which was Resource Protection and what that really was the area in the flood plain. We realize there is some inaccuracies in our data. There are inaccuracies in the elevation and so we were showing people in Resource Protection but it wasn't always accurate. We reached out to DEP and asked if we could start side referencing that if you are in a tidal area in a flood plain, you are really in Resource Protection I. Really the front lots have not changed so it shouldn't change for our residents but rather the way we were showing it. We do have a specific reference to the current FEMA maps which are from 1985. We talked about that being incorporated into the text because we suspect that at some point FEMA will update the maps and We will have to revisit our Zoning Map in our own Resource Protection zoning at that point in time. The Board does have a note amendment she wanted to hand out tonight to clarify Note #2 regarding the flood plains. She felt this covers it and she is happy to answer questions.

Mr. Morse added as a point of clarification, the flood plain that would be subject to Resource Protection would only be in the Shoreland Zone and is limited to the 100-year flood plain. Some of the FEMA flood plain maps actually show the 500-year flood plain in some instances so this would only apply to Resource Protection up to the 100-year flood plain extent.

MOVED AND SECONDED: To open the Public Hearing. (Cannan & Jortner) **VOTE:** (6 Ayes) (1 Excused-Savona) (0 Nays)

Peter Shepard of Merganser Way had a question on the Island District and how far the Board's authority extends? Does the Ordinance just pertain to on land buildings, structures, vegetation removal or does it include any of the surrounding waters? Some of the language in that kind of says that it extends beyond into the waters. Ms. Pelletier advised that Coastal Waters will come into play for certain waters. The Zoning Ordinance pertains to the land and that shore setback. She asked Mr. Morse to add further clarification on to water regulation and who gets involved when.

Mr. Morse knows they were striking out some sections in there but he did not recall. In Table #1, the Coastal Waters Commission had to approve piers, wharves, docks and the like and that language was struck out in this amendment. Ms. Pelletier advised that they tried track changing the table and it was a disaster and nobody could read it. We took out the old table, put the language that was still valid in it and added to it. Coastal Waters does still have authority over piers, wharves, docks and floats. The same

purview they had before. She clarified that for permanent, non-tidal, has PRB but temporary and permanent tidal still go to Coastal Waters. Temporary non-tidal go to the Codes Enforcement Officer. Mr. Cannan agreed that it was struck in the old table but appears in the new table. Ms. Pelletier advised that Staff does not have the language for piers, wharves and docks in here because they are currently in the Coastal Waters Ordinance. Chair Kapala explained that all the setbacks we have been talking about depends on whether they are stable or unstable. The intertidal zone is outside and Ms. Pelletier believed it is the State's. Mr. Shepard feels it is a little inconsistent because it says, protect the Island District and surrounding waters and the language would infer the Board's authority would go into the intertidal zone. That language is in the description of the Island District. Chair Kapala noted his interpretation of that language, and he wishes it were not the case, but it protects the waters by protecting what is on the land because the jurisdiction of the zoning is still what is on land. Ms. Pelletier added in the Island District only, piers, docks and wharves do go to the Project Review Board as they do today and they are under Coastal Waters currently. Staff is not proposing to change that with this but it is something that could be looked at in the future and it has been flagged. She added that there was some discussion about looking at how we are doing with piers, docks and wharves as a community but that needs to be a separate bigger discussion and if that happens, it would be a further amendment process. Mr. Ball does not understand why there was a low watermark because the pier is extended to the low watermark and from then on, you are in the State's jurisdiction.

Chair Kapala clarified that the question is where does the Island District end and begin. Mr. Shepard noted it seems like the ordinance that is drafted the way it is, says the Island District which ends surrounding waters would include more than just the land. Chair Kapala feels he brought up a good point in the description of the District but Ms. Pelletier feels it might not be an accurate description the way that purpose of the Island District is written. Chair Kapala added that the description does not align with the legal reality of it. Mr. Shepard advised that the Board is editing whether the Coastal Waters Commission has to have approval on it and he thinks it seems inconsistent. If the Board reads Article 32, it doesn't seem like they are aligned with what this Board is saying. Ms. Pelletier advised that the Coastal Waters Ordinance does need some clean up but yes, they have the authority today in their current ordinance to do that and further, the Zoning Ordinance adds that second requirement in the Island District being referred to in Section 426 that goes to Project Review. She thinks the Board could flag that purpose for all the zoning districts to look at and clean up and make sure it is accurately reflecting the standards below and our Comp Plan. Mr. Cannan feels the point is we adhere to these regulations on the island. We are protecting the larger surrounding area and he feels that was the point. Chair Kapala agreed and noted that it is a good point. He asked who is in charge of protecting the waters that directly impact Freeport residents? Right now, it seems like it is a big gray area and no one is in charge so you can weave your way through and get away with all kinds of fun stuff. He thinks that a lot of people feel we should clean that up. He does not know where the jurisdiction of the Planning Board begins and ends in that process.

Ms. Pelletier mentioned that if we are talking about the Coastal Waters Ordinance, it is a separate ordinance that would go through the Ordinance Committee. If the Board changes that, it could be intertwined with the Zoning Ordinance in which case this Board would get involved yet they are two separate documents for two separate bodies. It would then go to the Council. She noted that the Planning Board does not have purview over the Coastal Waters Ordinance but there would have to be a collaboration because if we are going to update that one for the piers, docks and wharves, it has to be consistent with the DEP standards for that. It is all intertwined. Mr. Shepard asked if the Board would be taking any action on to recommend or would that be something that has to be outside of your purview? Ms. Pelletier advised that it is outside of this Board's purview, he could reach out to Coastal Waters or

reach out to the Manager's Office. Mr. Shepard noted that he has done a little bit of that and everybody is pointing the other way. Ms. Pelletier noted she would be happy to reach out to him if he would leave his name and number on her counter when he leaves tonight. He agreed to do that. Mr. Jortner asked if the Planning Board could suggest to the Ordinance Committee to take this up. Ms. Pelletier advised that she could send a staff memo and note that it came up at a meeting that we should re-examine the Coastal Waters to make sure it aligns. Chair Kapala mentioned that he is really glad this issue came up. He thanked Mr. Shepard for bringing it up. This is something he wanted to bring up at the end here. A big part of being in Freeport and being on the water is the experience of the water for a lot of people. He thinks there is a sense in wanting a say on what's happening. Mr. Ball noted that you are limited to where you are in federal and other State jurisdictions and where those lines are. Chair Kapala added that the process is not very clear and there are ways in which the processes could be clearer.

Ms. Pelletier explained the letter to the Council, and the cover letter that goes along with that ordinance recommendation and whatever the Board decides on the map. Joyce Veilleux of Island View Lane mentioned that one of the things we need to look at as a town is that it is her understanding that the Corps of Engineers has designated certain waters as Freeport waters. Certain waters are Yarmouth waters, etc. Every town on the coast has jurisdiction over certain waters and that is the reason why we have a Harbormaster and he is a Police Officer that has a boat and lights, etc. He can go out and stop speeders and drunks and help protect our waters. When somebody is putting up structures in our waters whether they be tidal or non-tidal, then isn't it the purview of this Board to look at how we do this and what structures we allow where in our different zones? Chair Kapala added that it could be argued that it should be, but it is not currently and in order to make it, there is a process and today it is not the case. He thinks the point is well taken that it should be somebody's responsibility to have some say in that and he thinks it is great to hear the Town starting to stand up and say, hey, these things are happening in the waters and we need to figure out what to do about it because he 100% agrees that we have to figure out what to do about it. Mrs. Veilleux pointed out that we have 50 leases in Freeport waters and they are not being looked at. Mr. Ball added that he believes those leases are with the State. Chair Kapala feels there is a gap between enforcement and the process. Ms. Pelletier added that we want to note that concerns were raised about regulations pertaining to the waters off the Freeport coast and in particular we should be looking at Municipal Coastal Waters regulations.

Hank Soule of Little Bustin's Island had a quick comment on the point that was just made. He works in the commercial fishing industry at the federal level and at the State level as well. What the federal government does, law enforcement agencies, the National Fisheries Service, Office of Law Enforcement because they are overwhelmed as well, they contract with the State's Marine Patrol to cover some of the federal enforcement duties. He thinks Freeport could do the same thing in this situation is that the Maine Marine Patrol could contract with the Harbormaster to enforce some of these instances if the Town feels they are being violated. Chair Kapala noted that the process may be to go to the State and say, hey, we understand you may be overstretched. Mr. Soule added that if the Harbormaster has the time and at the federal level, it is a reimburse-able agreement.

Mr. Shepard pointed out that these are Freeport's waters with the Corps of Engineers and we have responsibility to make sure the right protections are in place. It is so easy to look at all the regulations that pertain to the land yet we don't have anything that pertains to the water. What we have is finger pointing in other directions and there are some serious things happening. There are more than 50 leases approved by the State that are active and out there. There are six more pending aquaculture leases and there are a lot of concerns that they are popping up all over Casco Bay. It seems like the Town is washing

its hands of it. He apologized for being so critical but it seems like no one has stood up to the fact that these are Freeport's waters, there is an Island District and unregulated stuff happening out there.

Ms. Pelletier advised that aquaculture has been a hot topic in Freeport lately. The State has informed us that we have very little involvement in the regulation of those aquaculture operations in the water. This is something she can flag because it is on the radar and there are some other waterfront issues we are having. Chair Kapala noted in theory, the waters are the jurisdiction of Coastal Waters but the aquaculture piece is outside of that and is at the State level. Ms. Pelletier advised that it is her understanding that the aquaculture in the water is under State jurisdiction but she is not going to pretend to be an expert. She noted she can flag it that there was concern at this hearing. Mr. Ball added that this discussion is a good first step and we can see what kind of answers we will get. Mr. Jortner asked if the Town has ever received a complaint along these lines from anybody? Ms. Pelletier advised that they wouldn't come through Planning so she is not sure. Chair Kapala agrees they are popping up all over the place and there is the Island Districts, the land all this stuff in between. Is it really outside of the Town's jurisdiction? Maybe it is now, but should it be? Of course, the next question is how do you make a deliverable out of that? What is the next step? Perhaps it is going to the DMR.

Ms. Pelletier reminded the Board that this is clearly not the Board's purview and we are in the middle of a public hearing so we are definitely off topic. Mr. Morse had a couple of quick notes. Unfortunately, he does not have the Coastal Waters' Ordinance in front of him so he can't take a quick look at that. In most town's Shoreland Zoning Ordinances, the authority granted to the Town under the Applicability Section establishes the Shoreland Zone at least 250 feet from the highest annual tide lines in coastal waters and 75 feet from streams and also extending the jurisdiction out below from piers, docks and wharves and other structures and uses extending below the normal highest annual tide. He is guessing where the Coastal Waters Commission seems to regulate those structures and uses to some extent, they must have some foundational language in their ordinance or somewhere in a Town ordinance that established that jurisdiction. He called to know that this is not one of the changes he implemented into the Shoreland Zoning Ordinance but the Land Use Table #1 in the Shoreland Ordinance listed aquaculture since this is being discussed as a Coastal Waters Commission review, whereas the proposed Table #1 Land Uses in the Shoreland Zone gave that authority across the board to the Project Review Board. Chair Kapala noted that is interesting because it is not what the State is telling us. Ms. Pelletier advised that we have aquaculture as a permitted use in here on land that is subject to Site Plan Review so if someone had a building fish farm, there is a very vague provision in the Coastal Waters Ordinance. She mentioned looking at aquaculture on land and she was surprised at the way it is permitted. It has been that way for a long time.

Chair Kapala noted the Board is slightly off topic but we are talking about the boundaries of the Zoning Map. He asked if there are any questions or concerns with the updated Freeport Zoning Map. There were none provided.

MOVED AND SECONDED: To close the public hearing. (Cannan & Child) **VOTE:** (6 Ayes) (1 Excused-Savona) (0 Nays).

MOVED AND SECONDED: That the Freeport Planning Board make the proposed amendments to the official Zoning Map for the Town of Freeport on September 1, 2021. The boundaries of the shoreland zone as regulated by State law, will be updated. Many areas previously designated as Resource Protection I are being amended to shoreland area. Areas within coastal flood plains will remain in Resource Protection however will not be shown on the map, as boundaries will be

based upon the FEMA Flood Insurance Rate Maps, as adopted by the Town Council. This is to be in accordance with State law and environmental protection under Shoreland Resource Protection. (Child & Jortner) **VOTE:** (6 Ayes) (1 Excused-Savona) (0 Nays)

Chair Kapala explained that this will be forwarded to the Town Council. He mentioned that in the Board's letter we will note the concerns brought up at this hearing. Ms. Pelletier agreed pertaining to water regulations, Coastal Waters and as far as the description for the Island Districts she would say that it might be something that this Board wants to look at for all the zones in entirety. She feels that a lot of that text has probably been there and people haven't given a lot of time and energy to update it. We don't want to change the intent of anything, especially if it is consistent with our current Comp Plan. She mentioned the Board would undertake a new Comp Plan pretty soon but we could definitely do some maintenance and clean up if it is not accurately reflecting.

Mike Morse was thanked. Chair Kapala knows it has been a long project and he appreciates the completion of it. It is officially complete when the Council adopts it.

ITEM IV: Public Hearing – proposed Remote Participation Policy for the Freeport Planning Board

Ms. Pelletier mentioned that the Board talked about this at the last meeting. There have been some good things about the pandemic. This Board has had a lot of people participating on the computer. We picked up a different audience and to her this is the perfect storm of public participation. We had people who liked to do it in person and we had people who liked to do it on zoom. State law changed and the Board can adopt a policy. Each Board and Committee has to have a public hearing and adopt their own policy so this was noticed in the paper. What you have here is a draft policy that came out of the Maine Municipal Association and was adopted by the Town Council. This will allow all the Board members and public to participate remotely. The intent for the Board is that you will all be here but if you are travelling or out of town, in quarantine or extreme circumstances and you can't be here, this will allow you to participate remotely as a voting Board member. It is not designed for you to stay home because you don't want to get wet or because you want to avoid confrontation with the public on a touchy issue. It is really for extreme cases and she expects that we will all be sitting here for the most part. If anyone of you has to participate remotely, you have to give the option for the public as well. This policy was adopted by the Council and they want to have a hybrid meeting and you guys will be here and the public will be here. There will be people on the screen and we will be able to see them on the screen at home and they will be participating using zoom or something like that so this will allow all that to happen. The Board needed to have a public hearing and then you can take action on it. The last thing to note is that if you are going to go hybrid, this policy says that we will do that as much as we can unless there is a technology issue. Right now, there is a technology issue. We are waiting for parts so we can't go hybrid in this room. As soon as we can do that with this policy in place, we will start doing that.

Ms. Child mentioned she was confused with one of the sentences that she read into the public record. Ms. Pelletier explained that the Council added this first sentence. She noted that if the tv breaks and we can't offer the hybrid option, we are still going to have a meeting. If technology doesn't allow, the public will not be able to participate that way. Best efforts will be that the Board always offers both options but State law doesn't say you have to offer it all the time but the intention of the Council is to offer it all the time so they added it in here. It's the Board's call so you could tweak it at minimum. If one of you has the opportunity, then the public does. Mr. Ball feels it is always best to have the public always have this opportunity. The more engagement we get from them the better. Mr. Cannan feels participation is what we need to encourage. Ms. Child noted how confusing the first sentence in the fourth paragraph is. Mr.

Cannan clarified that if any Board member is remote, the public will be remote. If the whole Board is in person, we don't necessarily have to offer remote participation to the public but if it is possible and the cost is reasonable why not offer it? Ms. Pelletier suggested breaking it up a bit so it might read better if it says, at all meetings unless technically not possible. Board members agreed. More discussion followed. Mr. Jortner asked what is the discretion of Board members to be remote? He is thinking of COVID and we don't know what the stage of transmission will be at any given point in time. If someone has a concern about being here in person because things look pretty bad, is that an individual decision or do we have to decide as a Board? Ms. Pelletier doesn't feel this is clear. Depending on where COVID goes, we might need to get legal guidance if a Board member is not comfortable participating. In this case, if one of you wasn't, we could at least hold the meeting if everyone else was. She feels we will have to deal with COVID on a case-by-case basis. Again, if it gets bad enough like in the past COVID situation and the Governor's Emergency Order, it was very clear. To her, COVID would be considered illness or emergency issues. Ms. Pelletier advised that the Board does not need to adopt this policy tonight. We don't have the technology in place yet so if the Board wants her to get some legal guidance to clarify the COVID situation and if we can strike out that member of the body, we can do that. If the Board does not want to act on this tonight, she asked that it be formally tabled. Mr. Ball feels the Board should table this since we don't have the technology available. Ms. Child wants to be sure it is clear that the public can participate both remotely and in person every time unless something happens with technology. Ms. Pelletier agreed that she has the first sentence circled. We will clarify if we can strike what we have to have for reference to a member of a body, participation remotely and then she will see if we can get some clarity on the COVID situation if we are not comfortable sitting in a public building.

Chair Kapala asked if the Board needs to close the public hearing on this? Ms. Pelletier advised that it does need to close the public hearing. More discussion followed.

MOVED AND SECONDED: To open the public hearing. (Cannan & Ball) **VOTE:** (6 Ayes) (1 Excused-Savona) (0 Nays) There were no public comments provided.

MOVED AND SECONDED: To close the public hearing. (Cannan & Ball) **VOTE:** (6 Ayes) (1 Excused-Savona) (0 Nays)

MOVED AND SECONDED: To table action on this amendment pending a legal review on the spirit presented which is allowing full remote participation from the public at any time and remote participation from the whole Board or the discretion of members of the Board, in extreme cases and clarification as to how this applies when a Board member is not comfortable meeting in person due to the COVID Pandemic. (Cannan & Ball) **VOTE:** (6 Ayes) 1 Excused-Savona) (0 Nays)

ITEM V: Persons wishing to address the Board on non-agenda items.

Ms. Pelletier explained that next month there will be two sets of Minutes to approve. We will have an update on the Re-vision. The Board might see some amendments pertaining to noise regulations. We have the Rules of Order that we discussed. We talked about the Emergency Ordinance and making some things permanent. A hot topic is food trucks. She asked if the Board wants to do a workshop with people in the downtown or jump right to public hearing? Chair Kapala didn't think a workshop is necessary.

Ms. Pelletier advised that when we do the Emergency Ordinance, she will reach out to Project Review if they want to come individually and participate. This is a preview of next month. When we get that wrapped up, the next thing would be working on the Comp Plan and then we have cannabis.

Chair Kapala mentioned food trucks. Mr. Cannan likes the concept of drafting it, talking about it and then holding a public hearing. If public hearing goes completely opposite of our language. We can table it and revisit it. Others agreed.

ITEM VI: Adjourn.

MOVED AND SECONDED: To adjourn at 8:05 p.m. (Jortner & Ball) **VOTE:** (6 Ayes) (1 Excused-Savona) (0 Nays)

Recorded by Sharon Coffin