

MINUTES
FREEPORT PLANNING BOARD
FREEPORT TOWN HALL COUNCIL CHAMBERS
Hybrid Meeting
WEDNESDAY, APRIL 6, 2022
6 p.m.

Attending: Andrew Arsenault, Robert Ball, Vice Chair, Anna Child, Wayne Jortner, Sam Kapala, Chair, Mitch Rouda and Caroline Pelletier, Town Planner.

Excused: Rosemary Burwell

Chair Kapala called the meeting to order at 6:06 p.m.

ITEM I: Information Exchange

1) Introduction of new Board members

Chair Kapala welcomed new Board members Andy Arsenault and Mitch Rouda. Ms. Pelletier noted that Rosemary Burwell is excused this evening. She reminded the Board to turn on their microphones. The preference is to leave them on because it is really hard to hear on zoom. Tonight's meeting is a hybrid and she explained how she would get the volume up.

2) Update on Downtown Freeport Vision Plan

Ms. Pelletier advised that the Board should have gotten in their packets, and she wanted to extend it to the public, an invitation to the Downtown Vision Planning Open House coming up this Saturday from 11 to 2. The hope is that it will be outside so we can have an in-person event which she feels is pretty exciting. If it rains, they will be inside. The Downtown Vision Project has been going on for more than a year to create a vision for downtown Freeport. There have been a series of surveys, a set of public meetings, a downtown walk and we just finished Design Week. You may have noticed all the renderings out in the hallway. Those are all the ideas that have come from our community so far that Principle Group, our consultant has put on paper so that we can react to it. As a result of Design Week, they further finetuned the ideas and there are a few more ideas they want to hear from the public on. We are hoping to get a lot of people at the Open House for one last chance to give in-person feedback and they are then going to produce a draft of the plan for public review. It should be going to the Council for final review and possible acceptance in May. They are hoping everyone can attend. There are fliers on the counter with information to RSVP. If you forget or can't RSVP, by all means stop by. They are hoping to get a lot of people there.

3) Update on annual workshop with Town Council

Chair Kapala advised that the Board met briefly with the Town Council and updated them on what we are working on. They talked about cannabis which is an item the Board will be working on. Aside from reiterating the Council's long-held position that they are opposed to retail cannabis in town, they were excited to see what we come up with as far as regulating cultivation with the new land use ordinances in town. The other thing they talked about was the Comprehensive Plan updating process and getting some additional resources allocated to hire consultants to help us with that process so Staff and the Board's time can be better spent out of the weeds, at least as much as possible. Inevitably there should be some weed whacking involved. It was a brief meeting of 15 minutes or so.

4) Ms. Pelletier advised that at last night's Council meeting, Speaker Ryan Fecteau came to speak about a housing bill that is before the State for consideration. They had about an hour discussion on it. The bill in general and what it is proposing for municipalities to look at for regulations to encourage affordable housing, additional units and accessory dwelling units. It was a good introduction in PowerPoint and there was some conversation about what this would mean for Freeport. If you were not at the Council meeting and did not see it, she encouraged the Board to watch that one

hour and explained how to find it on the Town's website. She is confident the Board will find it very informative and if it is something adopted by the State, it would be something that will come before the Planning Board if we need to make changes to our Land Use Regulations.

ITEM II: Approval of Minutes from the December 1, 2021 Planning Board meeting.

Chair Kapala noted that Mr. Bell and our two new members were not at this meeting so it leaves Wayne, Anna and him to approve. The minutes will be tabled since the Board cannot take action until we have Mrs. Burwell to make a quorum.

ITEM III: PUBLIC HEARING - Creation of a new proposed Shoreland Zoning Ordinance for the Town of Freeport

The new Ordinance would be based on existing shoreland zoning regulations that are contained in the current Zoning Ordinance and would be put into this new document. The language would then be updated to comply with the minimum requirements of the State of Maine's Mandatory Shoreland Zoning Act. (Note: These are the same standards the Planning Board discussed in 2020, however in a new format).

Ms. Pelletier advised that Mike Morse a former consultant with Morse Environmental Consulting, LLC is present tonight. Back in 2015 the State of Maine adopted Shoreland Zoning updates and municipalities were supposed to update their ordinances to meet at least the minimum requirements. We took our time and in 2019 we tried to update that language. The Planning Board had a public hearing and it got sent to DEP and DEP said no, you need to change some more. We had some staff changes and other things so we hired Mike Morse who used to work for DEP come in and update our Shoreland Ordinance because all of our Shoreland Zoning was in the Zoning Ordinance. We then had a pandemic and didn't meet for a while. We then had to get used to meeting on line so it got further delayed. Back in September 2021 we had a big public hearing to adopt the updated language that Mike had prepared. The Board made the recommendation on the amendments to the Zoning Ordinance and the Zoning Map to the Council. We did hear from some residents at this Planning Board process that we could use some clarity in our ordinance whether it be for Shoreland Zoning or for some other water issues. It is a hot topic in Freeport. When the Council got to the public hearing questions were raised as to the complexity of Shoreland Zoning and by having it intertwined as Freeport has always done in a 275- page document didn't appear to be the most user-friendly way. Essentially what the plan was decided to do was to take an attempt at creating a stand-alone Shoreland Zoning Ordinance in hopes it would be easier for people to understand. They could open the one document and have the standards there. As far as content, with the exception of the Coastal Waters Ordinance which she will get to later, the content is the same. What they did to get this draft stand-alone ordinance before you tonight is that they took the same Zoning Ordinance that we talked about before and deleted everything that was tied into the Shoreland Zone. They had just the Shoreland standards left and added to it as needed because it would stand alone and they needed to add things like what will you do if there is an amendment? What is the applicability and some of the more formal things but we tried to keep the general layout, the formatting and the existing ordinance they had been working with?

Before you tonight you have a stand-alone Shoreland Zoning Ordinance. She offered to give the Board a quick brief overview of what the changes mean to Freeport and again changes from what we had on the books when we originally started updating back in 2019. The first section is the Definition Section. It is pretty standard. Most of those are Shoreland Zoning definitions but again since we were pulling it out, we had to duplicate some definitions that we already have in our Zoning Ordinance. Just now you might find one in both documents. We have had some changes to the Non-conformance Section and we discussed this quite a bit at the last meeting. In this case the new language will go by footprint. It gets rid of that volume calculation. At the last meeting Mike said the intent wasn't to change the standard but the intent was to make it easier for people to figure out. This was to be a simpler method to allow people to figure out what they can do for expansion. They then got into the bulk of the ordinance, the regulations, it outlines the districts and what they are. What we call them in Freeport, what they include. We have the Table of Land Uses that was from our old Zoning Ordinance that we moved over. We were missing some uses and that did need to get updated. After the Land Use Table, you then have all the land use standards that go along with any use in the Shoreland. Things that were updated were lot coverage. There was a little bit of clarity so that driveways are now included in lot coverage.

There are some exemptions for lot coverage, boat launching facilities naturally occurring ledge. We talked at the last meeting that there were concerns in Freeport for lot coverage. We added a provision at the meeting that that was something you could go to the Board of Appeals for but it would be tough and we talked about that but it is still incorporated into that new language. There are some provisions for retaining walls. We had to do some clean-up. We had to remove any reference to timber harvesting so it has been removed from this version. There are updates to the clearing of vegetation, specifically in the way you measure it. The intent is the new way of calculating measurements will be easier for a Shoreland owner and it is a little bit different in how the point system is applied. There is some clarity on what is a storm-damaged tree and when you as a property owner can remove those trees. There are some exemptions to removal of vegetation. There are new standards for revegetation. Freeport has standards for shoreland stabilization. There are some signage standards that we didn't have before so we added those in. In the Administration Section we added a couple of new things that had been on the books for a while and we have been enforcing or using but were not in our Ordinance. One of those is that any contractor in the Shoreland Zone needs to be certified by DEP and Best Management Practices for Erosion Control. Also, there is a requirement that you submit photographs before and after some clearing to have a clear paper trail for everyone of the before and after and what occurred on the site. Incorporated into this by reference would include some updates that if you to get a variance before the Board of Appeals, there are some specific requirements pertaining to what is issued in the Shoreland Zone. Those have been incorporated by reference into this new version and are also included in the Zoning Ordinance.

Ms. Pelletier noted that Mike Morse is here tonight if the Board has questions. She reminded the Board that this is a public hearing so the Board would need to open and close the public hearing before voting on those motions if you decide to take action on anything tonight.

Chair Kapala thanked Ms. Pelletier and other staff. He is sure Nick (Codes Enforcement Officer) and Cecilia (Assistant Town Planner) were involved in putting this all together. He recognizes that this was a huge amount of work.

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

Alexis Grillo and her husband Bradley Grillo of 41 Lower Mast Landing Road spoke in support of passage of the proposed Shoreland Zoning changes. For the past three years they have been pulling apart a dilapidated property board by board and rebuilding it into their home. When there was nothing left except 2x4s, they began to rebuild. Since then, they have redesigned and replaced nearly the entire physical structure and all of the utilities. They did 99% of the work themselves. They feel incredibly proud in what they have accomplished so far. The problem is that they are only half-way done. They have no sheltered place to work or store tools or vehicles. The problem is they designed their dream house on the new code which they thought would pass several years ago. When it didn't change as expected Nick Adams and Caroline reassured them and asked them to hang tight. The changes will happen soon. They kept themselves busy and refocused on areas they could not rehabilitate under the current code. During the last three years they occasionally checked in with Nick and Caroline about the zoning and the answer was always the same, Hang Tight! They could compromise and build within the current code but after three years it is hard to give up their dream plan especially when it feels so tantalizing close. They know the Board is considering many different factors regarding the Zoning change and they hope they can be one of them. As the Board is working on this, they want the Board to remember that they are in limbo and it is hard and they are a crew of two (she and her husband) and everything takes significantly longer. If they are to finish anything significant before next winter, they have to begin soon. They asked the Board to please pass the Zoning changes without further delay.

Joyce Veilleux of Island View Lane suggested that the Shoreland Zoning remain an ordinance and thanked Caroline and her crew for what they have done. It is a lot easier for people who do not live by these documents every day to read and to know what to do. She knows this ordinance was written from the DEP Chapter 1,000 and she read the second paragraph into the public record. While she thinks this document needs to be adopted tonight by this Board and by the Town Council at their next meeting because there are several families like the one that was just here that have been in limbo for so long. There are still several areas in here she feels the unique situations in Freeport were not considered

and we took the language directly from Chapter 1,000 of the DEP and did not modify it for our specific needs. A lot of the lots along the coast in Freeport are small. There are lots in her area that are 50' by 100' and with the two sections she has looked at, is the non-vegetated surface and also Section 306N3 that talks about what you can clear and what you cannot clear. She pointed out that the Board makes it impossible for us to build a house let alone expand a house. Chair Kapala advised that the State sets out minimum standards and it is not up to towns to make standards than are less restrictive. We are free to be more strict with our standards, we are free to do that but we are not free to go in the other direction. Mrs. Veilleux respectfully disagreed with Chair Kapala. Ms. Pelletier noted that both of them are correct but with a new ordinance, once you start to use it you will find things that work and do not work so her guess is this looks great today but we will have to look at a little clean-up if things come out of the public hearing that our community and our Council want to know, we can ask the question and see if there can be some flexibility but at least have Staff approach the DEP and see if that is a discussion that can be had given the uniqueness of Freeport.

Mike Morse thanked the Board for accommodating his attendance via zoom. He agreed with Caroline that both parties are correct but the point of this amendment process has been clear from the start. Just to amend the ordinance to make it consistent with the State minimum requirements in Chapter 1,000. There is a provision within the Mandatory Shoreland Zoning Act that affords any municipality in the State of Maine to petition DEP for an ordinance or provisions within the ordinance that are less restrictive than the State's minimum requirements. Generally speaking, it is conducted outside of this process that the Board has gone through for a document tonight to comply with the State's minimum standards. It is an option for some point in the future. It is a special process and something that Planning Staff would listen to some of the concerns from residents, the Planning Board or the Council about certain areas where the standards seem to be restrictive for the Town of Freeport and then work with DEP to come up with some language that might be workable for DEP that they would accept if it was adopted by the Town's Council. There is that vehicle in place and may be something the Town would want to look at in the future. He has seen it come from Planning Boards, Select Boards or Councils or Codes Enforcement Officers. If the Planning Board would like to tackle that, it is perfectly acceptable.

Chair Kapala advised that he has learned something. He thought the minimum standards are the minimum standards but he is sure this is not a quick two-meeting process given how long it has taken us to get to this point. Mr. Jortner mentioned that assuming the State would prohibit a lesser restrictive ordinance, would it also prohibit a variance request? Ms. Pelletier advised that the State allows us to put the variance language in there but as we discussed before, a variance is very hard to meet for hardship. There is something for single-family but it would need to be your primary year-round residence which does exclude a lot of people on the water. Mr. Jortner noted that it would be possible for this party to go the variance route. Ms. Pelletier agreed and pointed out that it is in the version today but there has to be a reason for the variance. Chair Kapala clarified that it is more than a reason. Hardship is either you need to do this thing you are claiming you have to do or you can't use the house for anything. Ms. Pelletier noted that you need to ask the question and be told yes or no and she thinks it is something we could pursue with the Board's support and the Council's support.

Chair Kapala opened the meeting up to folks participating remotely on zoom. While waiting for comments, Ms. Pelletier pointed out that there is a sheet on the table containing two clarifications to the original documentation that was on line. One in the shore setback had the DEP definition that we had put in there, we adopted it to be our own because it wasn't clear where people had stable or unstable bluffs that they have to take that setback from the top of the bank. she just added some language so that it is clear and then on Piers, Docks and Wharves, etc. under the Land Use standards there is a reference to Coastal Waters. We had to strike out shoreline stabilization because Coastal Waters doesn't do shoreline stabilization and that is addressed somewhere else. She advised that they had DEP take a preliminary review of all of this stuff before the Board tonight and any comments they gave us were incorporated which is why we didn't get this out as early as they hoped because they got comments from them Monday and then later this week and we just got some comments from Coastal Waters.

Claire Martin advised that she recently purchased a house on Merganser Way and looks directly out on the Island District. She mentioned that the DMR regulates the waters but she feels we need to keep that area protected because it

is part of the mudflats where the migratory birds go through. She hopes to protect the waters around Williams Island, Pettingill Island and Sow and Pigs where they are trying to put in aquaculture sites. While it is a nice area to grow scallops and other things, it is in our best interest to keep it protected for residents and wildlife. Chair Kapala pointed out that Ms. Martin's comments pertain to the next public hearing,

There were no additional public comments provided. Ms. Child noted she is happy to learn that if we did want to make any further changes, it could be looked into. Chair Kapala agreed and thinks probably the most efficient way to advance that pause will be to not go through the Planning Board over the next year or two because the Planning Board has a lot on its plate. Ms. Pelletier advised that if we want to pursue it, the most efficient way would be to get our ordinance compliant because it has been a while, get our ordinance thought this process, have DEP review it for consistency which they have already done preliminarily so if the Board decides to make a recommendation tonight, it goes to Council and there is a whole Council setting and holding a Public Hearing. We then send it to DEP and they have 45 days from date of receipt to review and approve the text. She thinks the Board would want to wait until that is done before we try to push the envelope to see if there is any flexibility. Ms. Pelletier advised that if the Board decides to make a motion on this document tonight, she provided some draft motions based on the motions the Board made the last time. You would just acknowledge that it was the draft presented at the 4/6/22 Planning Board meeting and also if you are willing to accept the amendments as presented. Shoreland Zoning is the one time you don't have to make the finding that it is in harmony with the Comp Plan but we have the same draft language before the Board modified slightly.

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

MOVED AND SECONDED: Be it ordered that the Freeport Planning Board recommends to the Freeport Town Council the adoption of a new Town of Freeport Shoreland Zoning Ordinance – Chapter 65 as discussed and proposed at the 4/6/22 meeting consistent with the Town's Comprehensive Plan Vision that Freeport would be responsible stewards of the environment by protecting environmentally sensitive areas and the regulations were developed to be in compliance with the State of Maine Mandatory Shoreland Zoning Act. (Ball & Jortner) **VOTE:** (6 Ayes) (1 Excused-Burwell) (0 Nays)

Chair Kapala explained the process that will be followed. He thanked Mike Morse for being here by zoom.

ITEM IV: **PUBLIC HEARING - Proposed Amendments to the Freeport Zoning Ordinance**

The proposed Amendments to the Zoning Ordinance would remove Shoreland Zoning regulations and clean-up text resulting from the removal of the Shoreland Zoning Regulations. Many additional non-substantive text amendments are proposed throughout the Ordinance to correct typographical errors, correct/remove outdated references and to incorporate gender-neutral pronouns.

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 204. Contract Zoning; Section 302. Zoning Map; Section 304. Map Corrections - Shoreland Zone and Resource Protection District (to be repealed); Section 402. Rural Residential District I and Rural Residential District IA; Section 403. Rural Residential District II; Section 404. Medium Density Residential District I; Section 405. Medium Density Residential District II; Section 406. Medium Density Districts; Section 407. Village I; Section 407.A Village I-R; Section 408. Village II; Section 409. Commercial District I; Section 411. Commercial District III; Section 412. Commercial District IV; Section 413. Village Commercial I; Section 414. Village Commercial II; Section 415. Village Commercial III; Section 416. Village Commercial IV; Section 417. Village Mixed Use District 1; Section 418. Village Mixed Use District 2; Section 420. Local Business District; Section 421. Industrial District I; Section 422. Industrial District II; Section 423. Marine Waterfront District; Section 424. Resource Protection District I; Section 425. Resource Protection II; Section 426. Island District; Section 428 – Nature-Based and Art Overlay District; Section 504A. Open Space, Expanded Open Space, and Large Lot Residential Developments; Section 504 C. Rural Flexible Lot Development; Section 504D. Commercial Open Space Subdivisions; Section 505. Campgrounds; Section 507. Shoreland Zone Regulations (to be repealed); Section 509. Extraction; Section 515. Noise Regulation;

Section 520. Fire and Explosive Hazards; Section 524. Mobile Home Parks; Section 525. Filling of Lands and Creation of Ponds; Section 526. Peddlers on Private Property; Section 526.A Food Trucks; Section 527. Performance Standards for Commercial Districts; Section 528 Regulation of Wireless Telecommunications Facilities; Section 531. Retirement Community Overlay District; Section 534 - Solar Energy Generation Systems; Section 601. Enforcement; and Section 602. Site Plan Review.

Chair Kapala summarized this one by stating it is the other half of which we just passed which is the fact that we need to clean up all the rest of the Zoning Ordinance due to the fact that it is now missing all of the shoreland stuff that used to be in there. That triggers all kinds of little changes and Caroline, Cecilia and others have taken the opportunity to clean up typos, pronouns and all kinds of good stuff while we are at it.

Ms. Pelletier asked if anyone found any typos? She feels Chair Kapala summarized this very well. It was the longest public hearing she has ever had to run because as they went through the ordinance, they were making notes over the years about all the inconsistencies like Site Plan, Site Review or Site Plan Review, lot area, lot size so they tried to clean up a lot of those inconsistencies. They had references to Zoning Districts that don't exist anymore. Last night the Council repealed the Victualer's Ordinance which she knew was pending so this omits reference for food trucks to the Victualer's Ordinance. In addition of taking out the entire 507 Section as a repeal, it was the whole Shoreland Zoning Section which the Board just adopted as a new document. There are a lot of definitions, some big changes to the non-conforming section. They added some references in Zoning Districts to refer people to Shoreland Zoning because they had parcels in the zone that were in the Shoreland Zone but it was missing the cross reference. She noted in Section 304 map corrections based upon advice from our Town Attorney, any map correction, (she had only used a couple of times in her 20 years here) but a map correction is a Zoning Map amendment and needs to follow that public process not this amendment process here. We got a comment at the last meeting that there is aquaculture going on in Freeport and people are concerned. They want to better understand who is doing what. The way it was in the Zoning Ordinance, anything under Site Plan Review comes under the review of the Project Review Board but for some reason it had aquaculture going to Coastal Waters. The Coastal Waters Commission does not have any authority for Site Plan Review and aquaculture in the Zoning Ordinance which is a Land Use Ordinance above the hat line, it refers to it being in a building or structure. They fixed that reference so if you are doing aquaculture on land, (she doesn't believe we have any) that would be under the purview of the Project Review Board. Those are the biggest changes. We did get a comment from Claire about the Island District so she asked the Board to turn to that to see if there is anything in there you would want to look at adjusting to see what she was referring to. It starts on Page 119 at the bottom in Island District. She does not see any change to the purpose. Under permitted uses we are getting rid of the Shoreland Zoning cross reference. The language we added before for cutting except for islands connected to the mainland. There was an exception for islands connected for cutting. We added a cross reference for the Shoreland Zoning in there. It is basically the same with a few cross references and corrections.

Under Section 601 which is enforcement at the Board of Appeals there is a provision as to when we have to notify DEP in Shoreland Zoning areas that have restoration. In Section 602, which is Site Plan Review, for any project no matter where it is located, the Project Review Board reviews it for environmental considerations. Those are actually standards right out of Shoreland Zoning we apply universally. They updated those to reflect the current Shoreland Zoning such as won't cause water pollution or destroy habitat, just basic environmental things.

Mr. Arsenault mentioned aquaculture and asked if they have a land-based building that goes with their off-shore base? Ms. Pelletier advised that we haven't had any but the portion on land would come under the purview of the Project Review Board. We do have an Aquaculture Ordinance for Intertidal but beyond that we don't have any municipal authority. Above the hat, if they have a building or structure, it will trigger Site Plan Review.

MOVED AND SECONDED: To open the Public Comment hearing. (Rouda & Jortner) **VOTE:** (6 Ayes) (1 Excused-Burwell) (0 Nays)

Claire Martin explained that she is worried about the Island District because it seems like a lot of those commercial uses are coming close to the islands. She noted that the Town's manual talks about how highly treasured the island district is. She mentioned that near Sow and Pig someone is proposing to do some aquaculture and would like to see that area protected. The DMR has said that it is their intertidal water but she feels the Freeport Council should say it wants to protect that area. She wants it investigated.

Ms. Pelletier directed the Board to keep their comments on the Zoning Ordinance which is before them. At this point we are talking about the Land Use aspect of it.

MOVED AND SECONDED: To close the Public Comment hearing. (Child & Ball) **VOTE:** (6 Ayes) (1 Excused-Burwell) (0 Nays)

Chair Kapala noted that this was a process meant to streamline and make it simpler so everybody can understand what we are trying to do. Ms. Pelletier added that this was to get clear, consistent and accurate. Mr. Rouda added that there was a need to change this for clean up to remove the other document and they have to go together. They have to go to the Council together because they won't make sense if they are not together. The spirit in both cases was to make technical changes. Chair Kapala feels the point Mrs. Veilleux made that it should be passed but we should keep working on it was a point well taken. Ms. Pelletier advised that we are not only hopefully becoming compliant with Shoreland Zoning but we also were talked to by the State Department of Forestry and Agriculture that since we are not regulating timber harvesting, if you want to harvest timber, you get a permit from them, we need to take out any old references. They were happy to see that we were cleaning up. Two agencies will be pleased with the cleaned-up documents.

MOVED AND SECONDED: : Be it proposed that the Freeport Planning Board recommends to the Freeport Town Council as presented at the meeting on 4/6/22 to remove the Shoreland Zoning provisions as part of the creation of a separate Shoreland Zoning Ordinance and it is consistent with the Town's Comprehensive Plan Vision that Freeport would be responsible stewards of the environment by protecting environmentally sensitive areas and the regulations were developed to be in compliance with the State of Maine Mandatory Shoreland Zoning Act, while at the same time including some general ordinance clean-up. (Jortner & Arsenault) **VOTE:** (6 Ayes) (1 Excused-Burwell) (0 Nays)

ITEM V: PUBLIC HEARING - Proposed Amendments to the Official Zoning Map for the Town of Freeport (pertaining to Shoreland Zoning)

This will be a public hearing on proposed amendments to the Official Zoning Map. 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 1.

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

Chair Kapala explained that this is Part 3 of this same project which is to bring the map into compliance. Ms. Pelletier acknowledged that her Assistant Planner, Cecilia worked really hard behind the scenes to do all this mapping. What the Grillo's had mentioned, one of the biggest changes to this map is that DEP previously said that if you are in an area that has high-value bird habitat, you had to be in Resource Protection I. If you are in Resource Protection I and your house is non-conforming, you can't do much with your property. The rules have changed so for the bird habitat areas, it is now converted to standard shoreland zoning so all of these rules you just recommended tonight would be in place but something like the house or some other uses would be considered conforming uses. Freeport is unique with Resource Protection I because DEP as we talked about, does allow you to be more strict. In Freeport there are two pockets of Resource Protection I left that are not related to any of the standard Shoreland Zoning requirements. They are actually related to aquifer protection. There are separate discussions going on about what might be appropriate for those areas but it is not part of this project. You still see two areas. One is in the area of the South Freeport water District and one at Frost Gully on North Main Street where Maine Water has their office. Those still show as RP-1. The map had a very little

bit of clean-up to draw things a bit more accurate. It was the last one and since we had a little more time, Cecilia did a little bit of clean-up for us. The other change is previously the Planning Board took the coastal bluffs off. We previously drew them on the map but we ran into issues that people were getting the bluffs re-evaluated and recategorized and if they were not unstable or highly unstable, they no longer had to take their setback from the top of the bank which could make a big difference for people. Because we were showing them on the map, and not always accurately, they still had to adhere to take them from the top of the bank. We worked with DEP as other communities do, we don't have to show them on the map but we have to reference them. They are still there and you still have to meet them but rather we are attaching the data source which are the two Coastal Bluff Maps. Copies will be attachments to the official Zoning Ordinance.

The other change that is not shown on the map but is still part of the map is that all of the areas of the flood plain down along the tidal water are still zoned Resource Protection and you still cannot build in them. Due to the mapping technology and the data we have available, we have some discrepancies in our data. She knows that FEMA has been talking about updating the flood maps so you have a note on the map and attached to the map will be the existing flood maps. Yes, they are from 1985 and they are the black and white ones. We are sending people to the source data to avoid any discrepancies we are creating due to mapping. She added that we have Cecilia here if there is a drawing question and Mike Morse if you have a technical question.

Mr. Ball asked if Ms. Pelletier heard when the flood plains map will be updated? She noted they have been working on them for years and she really doesn't have a timeline for that. Cecilia advised that there are preliminary maps that they are just waiting on. Ms. Pelletier advised that there are some substantial changes in some areas of Freeport which caused a lot of delay.

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

There were no public comments provided.

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

Chair Kapala noted that he likes sending them to the source. It seems like a very clean way to do it. It automatically updates when the source updates.

MOVED AND SECONDED: That the Freeport Planning Board recommends that the Freeport Town Council adopt the proposed amendments to the official Zoning Map for the Town of Freeport, dated 04/06/22. 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 1 based upon the FEMA Flood Insurance Rate Maps, which will now be attached to the official zoning map. The most recent Coastal Bluffs map by the Maine Geological Survey, will also be attached to the Official Zoning Map to show areas of "highly unstable" or "unstable" coastal bluffs. (Child & Ball) **VOTE:** (6 Ayes) (1 Excused-Burwell) (0 Nays)

ITEM VI: **PUBLIC HEARING - Proposed Amendments to the Town of Freeport – Chapter 21, Coastal Waters Ordinance**

Proposed amendments will include text changes to make sections of the Ordinance consistent with the minimum requirements of the State of Maine's Mandatory Shoreland Zoning Act; updated standards for Float, Dock and Wharf permits including a new standard for the length of a Float, Dock or Wharf and how far it can extend across the width of a water body or wetland; remove outdated reference to aquaculture; remove fees from the Ordinance text; and, some additional non-substantive text amendments are proposed throughout the Ordinance to correct typographical errors and to incorporate gender-neutral pronouns.

Ms. Pelletier advised that piers, floats, docks, wharves etc. are actually regulated under Shoreland Zoning. You don't have to regulate them. They are one of the optional things in Shoreland Zoning. Freeport has always regulated them and they are regulated a little more strictly. We have restrictions on the length, and we also have a requirement of the width of the lot they can be on. Back in the early 2000s we took them out of our Zoning Ordinance, out of our Shoreland and out of review by the Coastal Waters and the Planning Board. We put it in the Coastal Waters Ordinance and under the authority of the Coastal Waters to review. The Coastal Waters Committee approached the Town Council because they wanted to add some additional regulations pertaining to the length of a dock. When that discussion came up, we said, hey we are doing Shoreland Zoning and that is a Shoreland Zoning provision so at the same time we look at updating that standard, we need to update your Ordinance to be consistent with Shoreland Zoning. Luckily the time worked out and we could do it all at the same meeting. The changes you have before you tonight are a little bit of wordsmithing clean-up. One of the basic things we are doing here is proposing to take out references to fees. We don't like fees in ordinances because every time we need to amend them, there is a big lengthy process. It is much more efficient to have them separate on a fee schedule. Those are just some housekeeping issues.

Under Definitions there are some definitions under Shoreland Zoning pertaining to piers, docks and wharves and to some other uses that were already in the ordinance so we needed to add those definitions in. The most substantial change in this document is on Page 19, Article 8. You did have an amendment sheet before you tonight. 1-6 is really language to make us consistent with Shoreland Zoning. Article 7, Permit Application A, the language before you are just to note there is a reference to projects so just inserting that all of the items noted above are considered structures. That is important for Shoreland Zoning. Under the standards for Approval, there are Shoreland Zoning provisions, there is the Coastal Waters restrictions, the length of 125 feet. In 8.A.3 the current terminology of water frontage should be changed to shore frontage to be consistent with Shoreland Zoning. Again, that is in the language before you tonight. There is a standard in here regarding the length. They thought Mark Morrissey, the Chair of Coastal Waters was going to be here but he is not. She asked Jeff Stenzel, former Chair of Coastal Waters if he is prepared to talk about the length standards? Mr. Stenzel explained that Mark Morrissey regrets he cannot attend this evening. Mr. Stenzel noted he was the Chair many years before that. He lives in South Freeport Village. He explained this is a complicated subject but wanted to say that the full Coastal Waters Commission has not discussed all of these changes but for the most part they follow changes that Nick Adams and a few of them initiated in 2018 anticipating they would have to come in compliance with Shoreland Zoning. Specifically what Ms. Pelletier is talking about is under 8.A.2 where no part of the project can extend more than one-fourth of the way across the width of a water body wetland, etc. He noted that that approximates an Army Corps standard that is designed to allow navigation when there are structures on both sides. The Army Corps regulation is you cannot extend more than 25% into the navigable waterway at low tide. This leaves 50% of the waterway navigable at low tide. He feels it might be worth a little more discussion before it is finally adopted but it is designed so navigation is preserved. The Board might want to sharpen the definition to be parallel to the Army Corps definition at low tide.

Chair Kapala thought this was interesting on where the measurement is taken because in the Harraseeket River in places where 25% from high water, you are not even into the channel but in other places it might be more restrictive. Ms. Pelletier added that Coastal Waters brought this forward with some strict numbers but we needed something that people were able to understand and was enforceable. There was quite a bit of talk with the Chair, Jeff and the Town Attorney to come up with the language before you that seemed to be the best compromise. Now someone could put in a dock that was 125 feet. This would introduce limitations. From what she hears, the level of applications that Coastal Waters is seeing is more complex and there have been some concerns about navigation and not blocking it. Again, one-fourth of the way across the width of the water body. She was reading on Page 21 8.A.2 of the Coastal Waters Ordinance. Board members requested a copy. Chair Kapala noted that there must be places where that measurement of a 125-foot structure doesn't even get you into the channel. Mr. Stenzel pointed out that there are several levels of review above Freeport. There is the DEP and the Army Corps and if someone is proposing a seasonable structure which is something they put in in the spring and take out in the fall, then it doesn't get reviewed as strictly as a permanent structure. This may be a bad fit for some of the seasonal structures and also some of the tributaries where it is difficult to have a big permanent wharfing out. Mr. Ball asked if someone wants to build a permanent structure, do they need approval from the Town, DEP and Army Corps? Mr. Stenzel advised that that is correct. Chair Kapala noted that the pier, ramp and float are regulated here. Ms. Pelletier clarified that the whole thing makes the project the whole system so

now the length of the entire system which is every component can be 125 feet. It is not a change. The standard is 125 feet so now in some of our codes this would be adding an additional restriction. Chair Kapala clarified that the one-fourth is the additional restriction and Ms. Pelletier agreed. The talk started that we could just prohibit them in certain areas under a certain width but there was conversation that something might make sense and still allow some opportunity, not 125 feet but still give you a chance for something. Mr. Stenzel made the relation of the one-fourth that some people are using for Army Corps. Chair Kapala feels it was good common sense.

Mr. Stenzel referred to Page 20, 7.A.2 where it says copy of signed and received certified letters. He asked if the word "received" means the builder has received back a signed certified letter? Ms. Pelletier advised that that is the existing ordinance and she thinks it is the card that shows when you sign when you get certified. She asked what they have been requiring. Mr. Stenzel explained that their practice has been to just have a photocopy that certified mail has been sent out to abutters. They don't expect that they will count every received certified letter. Some people don't live here and some don't even live in the country during the winter when a lot of these projects are proposed. Mr. Ball added that it makes sense. He sent it and got proof that it was sent. The feedback from the builders has been that it is virtually impossible to get these things back. Ms. Pelletier added that they can be more strict but if it is not current practice, we don't want something on the books that we are not upholding. Mr. Ball feels they should do the best they can. Ms. Pelletier suggested based on the recommendation of Coastal Waters, you could consider changing it to proof that certified letters have been sent to abutters within 250 feet of the proposed project. She thinks that is their intent and Mr. Stenzel agreed.

Mr. Ball pointed out that he is seeing a lot of changes in this document and asked if we are discussing just the permit applications and these two that came in today. Ms. Pelletier advised that the changes in here are the new standard that Coastal Waters wanted for the length of the dock, the clean-up and the minimum requirements we need to get it consistent with Shoreland Zoning. The Town Attorney worked on this and the DEP did a preliminary review which is why you have two additional amendments on a separate sheet of paper tonight. Mr. Rouda mentioned that the Board can see everything that wasn't just forwarded over and the rest of it was all existing. Ms. Pelletier agreed that most of it was existing and it is all tying into the piers, docks and wharves because that is what comes under Shoreland Zoning.

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

Tim Forrester from Atlantic Environmental advised that he routinely submits applications to the Town for dock projects. He has been a consultant for 20 odd years and worked well with Coastal Waters and appreciates their efforts. He is neither for or against these changes but he just got his hands on the document and skimmed through it and wanted to shed some light on a few points.

Under 7-A Permit Applications, the first is a submission of a letter 30 days in advance giving access to a following agenda and then it says you have to submit seven copies. He wonders why it has to be 30 days in advance and why do you have to submit a letter and then it doesn't say when you have to submit your seven copies. In his opinion it might be easier for the applicants just to say you need to submit seven copies two weeks prior to the following agenda. In terms of the certified letters, there are two ways to notify someone. There are the typical green letters of certified mail that they sign and those are mailed back to you. He can say that he receives most of those and makes a photocopy and brings them to the meeting. There is another method which is a certificate of mailing and that is when you go to the post office, they will stamp out a letter that has all the addresses on it and it shows the date and time they were mailed. That perhaps could be included. Going down under Item B, Item 2 says when will the structure be built? He is not sure why that needs to be there. You receive your permits to build a project. Does it matter if he builds it in the spring, summer, fall or winter? Typically dock builders are building ramps and floats in the winter and installing the systems in the spring and removing them in the fall so they are building in the summer or the early winter.

The next one is will abutters be allowed access? He doesn't know how important that question is. Abutters may change and some people may or may not want to allow that so he doesn't know if that is significant.

As for who will build, store and maintain the project? He feels this is subject to change and the same thing is with storage and maintenance. Future plans for expansion? When you come in with an application, that is what it is but he supposes you can ask the question but he is not sure it is a relevant one. On page 21, the discussion on the maximum 125 feet and then the one-quarter width from the highest annual tide. He thinks Mr. Stenzel was correct in his reference from the Army Corps of Engineers where we are talking about navigable waterways. Navigable waterways are not from the highest annual tide so he thinks he heard a little confusion in how that discussion went tonight and he wanted to remind the Board that that one-quarter width is your navigable waterway so perhaps that is what it should be limited to. You already set your 125-foot standard. That reduces the ability of a lot of people to wharf out already and if you were to follow the Army Corps prescription of that when you move up into narrow channels, let's say they are only 40-feet wide, that only gives someone 10 feet to land a structure. If it is Coastal Waters' concern that these upper intertidal areas perhaps should be limited in their use. The further you go in, the narrower it gets so you eventually trip that. He thinks the definition is more clearly stated to say the navigable waterway as opposed from the highest annual tide. That is consistent with what you say on Page 22 under Item 7 in the first paragraph. No project located on a river, stream or brook shall obstruct public access to navigable portions of such water bodies so the term navigable would be consistent with both applications in both sections of the ordinance. He explained what he meant. Ms. Pelletier added that "navigable" is very vague to her and feels we need a very clear definition of that if we are going to measure off of.

Mr. Forrester referred to Page 21, Item 7, No temporary project used for non-commercial uses shall be wider than 6 feet in width. His concern is that typically Freeport's floats are wider than 6 feet so project defines pier, ramp and float so you are limiting your float to 6 feet in width in that standard. Ms. Pelletier felt that is a Shoreland Zoning standard for piers, docks and wharves in non-tidal but after working with the Attorney it got put into this version. Chair Kapala agreed 6 feet is a pretty narrow float and is definitely worth noting.

Mr. Forrester mentioned float haul-outs and the ordinance says you are allowed one pier, dock, wharf or other similar structure. There have been some issues with how you interpret float haul-outs which is really a couple of stringers extending down into the resource in order to store the float in the off season. He is hopeful that that could be elaborated on by the town. There are many situations such as people that live out on an island and a contractor would have to come out and get their float and perhaps bring it back to the mainland or find some other location to store it. A haul-out is a functionally water-dependent use in his mind. Its purpose is for the storage of the float and it is only for that use. If you are limited to one pier, dock, ramp or float, it does not allow you to build a haul-out next door which is just two little stringers unless you were physically able to attach it to the pier then it would be part of that structure. He is hopeful that the Town will be able to explore the use of haul-outs in the ordinance.

Chair Kapala thanked Mr. Forrester for all his comments. He asked about the 6-foot prohibition and Ms. Pelletier advised that it was taken out of language for non-tidal areas and after working with the Attorney it was carried into here. She believes the Board has flexibility on that. When sections of the pier, dock, or wharf are not in use, they are considered not functionally water-dependent which is why we have that standard we just talked about. When you take your float out and it is not in use, it is not functionally water-dependent. It is a structure and you need to meet setbacks. People should already not be storing them there to be consistent with DEP regulations and this is clarifying it on the books. There are people that already do not store them on site but this could make further limitations. They have to meet setbacks. DEP did look over this language and they consider them a structure. Mr. Morse advised that the DEP also regulates these types of structures so they have worked on making some amendments to the NRPA to allow for float haul-outs as Tim has described because a lot of folks do not have a place to put them or take them during the off season and it is better in a lot of people's minds to have them on these float haul-outs in the intertidal slots instead of clearing a site in the vegetated buffer up on the land to store these during the off season. It is a DEP standard there. Otherwise, the piers, docks, wharves standards in the ordinance that are proposed do for the most part match DEP's Chapter 1,000 Shoreland Zoning standards. Float haul-outs are not really recognized there either other than they could be considered functionally water-dependent structures not needing to meet shoreline setback standards.

Chair Kapala added that it hinges on the interpretation of water-dependent structures and if you consider them to be year-round or not. Ms. Pelletier advised that a lot of the docks are considered seasonal so they do come out of the

water. She advised that the DEP did review these as written but if it is something we want to get additional clarification on, we could try to do that. She asked Mr. Morse if the DEP has flexibility on the 6-foot piece? He advised that the State's regulations for the width for a pier, ramp or float under the Chapter 1,000 standards is limited to no more than 6 feet in width on non-tidal waters for a residential dock. It is not limited under the Shoreland Zoning provisions for tidal water bodies so it is an important distinction there. Separately DEP does under the Natural Resources Protection Act, they will limit residential piers on tidal waters to no more than 6 feet. Technically it is there but it is under a different regulation. Chair Kapala noted he is not sure that helps him understand what our options are. Mr. Morse boiled it down to a Shoreland Zoning standpoint. 6 feet is what we are talking about for the Town of Freeport ordinance, 6 feet is the limit on non-tidal waters such as Sebago Lake or any non-tidal river or pond in the state would be subject to that 6-foot width limit. For tidal water bodies the Chapter 1,000 Shoreland Zoning guidelines don't limit that. They will limit the width of the dock or pier to 6 feet but effectively because of a different DEP regulation they are limiting piers to no more than 6 feet. Effectively it is a limit of 6 feet. He would not recommend to the Town to pursue anything wider than 6 feet for a residential pier, dock, wharf or float in tidal water in the Town of Freeport. Mr. Ball explained how confusing this all is. Ms. Pelletier added that by putting this in here, people might not be happy but at the end of the day if they are not able to get their NRPA permit, they are going to be restricted. She asked Mr. Morse if people have to get those NRPA permits for permanent and seasonal docks. Mr. Morse advised that temporary structures are not regulated by the DEP under the Natural Resources Protection Act. Temporary structures include temporary docks which are structures in place less than seven months out of the calendar year so the Town does regulate temporary docks, ramps, floats and piers but the DEP does not. Anything permanent would be regulated by both the Town and the DEP. Temporary would only be regulated by a Town. Ms. Pelletier added that Mr. Stenzel could put if he wanted to that no permanent project for non-commercial could be limited to no wider than 6 feet. She does not know if that is a standard that Coastal Waters had gotten into or not. Mr. Forrester wanted to clarify that it is really the use of the word "project" here because project defines your pier, ramp and float. He sees no problem limiting a pier and a ramp to no more than 6 feet in width but it is the float he is concerned about. If you wanted someone to have a 6-foot wide float, you might as well not have a project as that is landing a ramp on a sheet of paper. The ramp will sink the float. The most typical float size is 10' x 20' so if that section were to read no temporary pier used for non-commercial uses shall be wider than 6 feet, it seems logical to him. Chair Kapala mentioned that was what he was trying to get at and apologized for his inexperience with this issue. He feels we need to have a provision for a seasonal float wider than 6 feet. It would be a big thing if we started restricting that. He is not sure he has ever seen one that narrow. Mr. Forrester suggested changing project to pier and Chair Kapala agreed it seemed like a common-sense approach.

Mr. Morse added that DEP from the Natural Resources Protection Act standpoint and Shoreland Zoning standpoint would support floats that are greater than 6 feet. What Tim is commenting on is very reasonable and should be supported by DEP. Chair Kapala noted that is a very good catch.

Carter Becker, Freeport resident reiterated what Mr. Forrester has said. He feels he has made some great points and asked that the Board listen to him. He explained that Mike Morse has also done great work on this. If we need to go back and refine this after the fact, but in expediency, he requested that the Board put it forward. If we need to go back and refine some things that are not accurate, we can do that but we need to put it forward to get something as long as we acknowledge we can go back and work on it. The floats need to be wider. Brewer's is not restricted to 6-foot wide and they are a year-round structure so we can't put them out. Not everything is temporary. With the 125 and the one-quarter inch, can we continue to talk about that because it is confusing to get something through and then go back to amend. He is perfectly good with putting it through as long as the Board admits yes, we can straighten it out unless there is a time you can straighten it out before that. He does not want to slow the Board down. He is with Mr. Forrester 100% on the haul-outs. We need to have that discussion because the haul-out is part of the structure, system or project. You have to have a haul-out. A haul-out is not to leave it in the wetland zone. It is to assist in getting it up out of the water and it is a vehicle to get your float there. We need to continue that and please consider the whole system of the project with a haul-out as part of it. We are putting much undue stress on everybody because haul-outs preserve nature by having us not drag these over the environment. It keeps it elevated above as we get it to where the DEP would like it to be. He would like some clarification at the Town level in what you would like to see and use haul-outs to get them there so there is some clean-up that needs to be had there. He thanked the Board for all its hard work and suggested

keeping open eyes to change it slowly in a year or so to come and not consider it a hard document but a living document.

Joyce Veilleux from Island View Lane advised that a gentleman mentioned going to the post office and doing certified letters versus doing a certified letter from the post office that the letters were mailed. She recalled there is extra postage involved if you do the green card and so by adding that they could do a certified letter from the post office so one letter had all different ones on there, your might be saving them a few bucks.

Ms. Pelletier wanted to note that there was an outdated reference to aquaculture which Coastal Waters can't regulate. We talked about aquaculture in the intertidal above the hat so that was to be struck. It is not something they have used and there are actually no standards to go along with them.

Mr. Ball feels it would be helpful to add the definition of a haul-out. He feels it is a fairly controversial thing. Ms. Pelletier does not believe DEP defines it. Mr. Morse added that he never saw a definition of a haul-out. He is not aware of a standardized definition somewhere. Chair Kapala feels it is a can of worms and the Board could devote every meeting until the end of the year to this. He asked what the Board's role is in this? Ms. Pelletier explained that this is before the Board because you are the Municipal Reviewing Authority for Freeport and is responsible for upholding the Shoreland Zoning process to have our standards be compliant. That is why it is before you. Otherwise, it hasn't come before you and if piers, docks, wharves weren't in here, it wouldn't even come before you if that makes any sense. She thinks the questions on submissions and timing are not in this Board's purview. That is the Coastal Waters procedure and not our area of expertise and she doesn't think we should weigh in on that tonight. Mr. Stenzel has heard there were some questions raised and he can choose to bring them back to Coastal Waters. As far as the width again, we really brought that width forward based on Coastal Waters discussion. The Army Corps standard does say that no structure extends across 25% of the waterway width at mean low water. We started with some mean low tide language but got into this great debate and that was part of the reason why the attorney drafted it with the high water. If the Board wants to get into a discussion on the length, she thinks it could be referred to Mr. Stenzel to see if he wants to bring it back to Coastal Waters to get them to weigh in more. Chair Kapala asked who writes the language for Coastal Waters? Ms. Pelletier explained that Coastal Waters had drafted some language that they brought to the Council. The Chair and past Chair worked with the Town Attorney to come up with this new language on the length which they felt meant the intent what Coastal Waters was trying to achieve by having a length in there. Mr. Stenzel advised that this is pretty much the language they worked on with Nick Adams in 2018 and things stalled out. Nick worked very hard adding a lot of definitions that were missing and corrected other things but some of this stuff that he and Mr. Forrester were talking about, the commission needs to go over it a little more closely before the final language is adopted. He agrees with Carter that we should get it moving and say we support it and then DEP might be able to comment on it. The 6 foot is a standard width and he thinks what people are concerned about is the way the sentence is written, it also applies to the float. Mr. Jortner suggested adding *except for the float portion*. Carter Becker suggested striking the whole line in 1.B and bring it back at a later date because this appears to be a bigger discussion that you want to take up at this time. He doesn't think the Board would be changing the intent and you could move forward quickly. More discussion followed. Ms. Pelletier advised that the Board could do Mr. Jortner's suggestion and say, except for the float portion of a project or if you feel it is not ready and you want it to go to Coastal Waters for input, you could table the whole thing but that would cause a delay because they don't meet until the second Wednesday. Chair Kapala liked Carter's suggestion and asked what the downside to that is? Ms. Pelletier did not believe there is any harm. Chair Kapala feels that is the simple way to do it and leave it in the State's hands.

Chair Kapala asked if the Board uses Wayne's solution, does it solve our problem? Ms. Pelletier called on Mr. Morse if we have a float in non-tidal is it limited to 6 feet? Mr. Morse advised that he is not familiar in non-tidal of any temporary dock or float system or a dock that would have a float system. He is not personally familiar with any situation where that might come up and he does not have the DEP standard in front of him. He feels it will depend on how they define pier, ramp or dock. It may fall into that same problem that the Board has already discussed this evening and that is the way the language may fall into it by default in non-tidal waters. Ms. Pelletier believes it would if they added non-tidal to the

front of that but again, she can't think of a case where it might really not be relevant. She feels if we took it out, the DEP would send it back to us.

Mr. Becker advised that floats are not all that could be wide. A 6-foot haul-out width is not acceptable. Normally they are 10-12 feet wide to accommodate the float. Even though it is only 8 inches wide and 8 inches but they are 10-12 feet wide, is that considered a 6-foot structure or two 8-inch structures? He is advocating for haul-outs and is not trying to get locked out this early in the game. Striking it and having an open discussion about it would be good. If the Board is worried about inland and fresh waters, say fresh water and not salt-water tidal areas. He is hearing the Board's concerns are in ponds and fresh water areas. Say that and don't complicate fresh water with salt water. They are two different areas and he noticed there are some cross references in here that is confusing from the Coastal Waters' perspective because inland is not Coastal Waters' jurisdiction as he understands it. He saw references throughout this but he didn't view them as being worthy of being brought up so he suggested that the Board be clear on what it is asking for inland.

Mr. Pelletier explained that typically it is in one ordinance, the Shoreland Zoning Ordinance so that one ordinance coming under one Board. In this case, Freeport chose to pull that one issue to one Board and then leave it partially with another Board that causes confusion. It has been that way for years. Ms. Child feels everyone wants to get through this but the question that Tim was asking why we are even asking these things? There are enough things that she feels it should probably go back to Coastal Waters. Chair Kapala added that he has never felt so far over his head. Mr. Rouda mentioned that he feels this Board should be approving it after Coastal Waters approved it. Ms. Child feels there is more technical input needed. Ms. Pelletier advised that Coastal Waters has talked about some of these changes since 2008 and the Chair and Mr. Stenzel looked at the length standard and worked with the Town Attorney and then incorporated the Shoreland Zoning. They definitely have not seen the Shoreland Zoning but the Chair and Mr. Wenzel felt that this represented what Coastal Waters had talked about and their intent. She does not believe they looked at the whole ordinance in changing things like questions, submissions, proof of postal or any of that stuff.

Mr. Rouda asked what happens assuming we recommend going forward? Can we recommend going forward pending their review? When would the Town Council be expected to act on this? Ms. Pelletier advised that Coastal Waters could have come tonight and they also could come in the Council's process. If the Board recommends it tonight, it will go to the Council and get set for a hearing in two weeks and then they would have another hearing in another two weeks. The Board could choose to table it. It would go back to Coastal Waters and probably would be heard probably in June. Mr. Ball asked if this was brought to this Board because it is the Coastal Waters' view that they have been working on this and this is where they are at. They feel it is at a good start and going in the right direction and they would like the Board to approve it and they will continue this work but they are on the right track. Mr. Stenzel explained that the Commission wanted to be partners with the whole effort to get the shoreline zoning in compliance. Yes, there does need to be some grooming of it but if they can move it forward and still be able to talk to the Council and go to these other public hearings and the final product reflects some of these grooming efforts, he thinks they are better off moving it as a total effort along with the other changes to the shoreline zone.

Mr. Jortner feels it would be more efficient to flag these issues for the Town Council and keep it moving forward. Mr. Ball does not see how it would slow down the process. Ms. Pelletier advised that it is a long process per the Board's policy you have to notify everyone in the Shoreland Zone any time you look at a standard that impacts them. Jeff and Mark were great to make sure we could send the whole package because there is substantial notification that Cecilia had to do to pull this meeting off. It is also important that you do it right and she doesn't want the Board to rush. If you wanted to forward it, you could flag the haul-outs and between now and when it goes to Council, we would have time to get DEP clarification. As long as a substantial change doesn't get made. If substantial changes are needed, it will have to come back to this Board through the whole process. It would be helpful if the Board weighed in on the width thing and how you want to handle it. Mr. Ball feels Mr. Jortner's approach works. Ms. Child asked Ms. Pelletier if the Board has to put something in about tidal waters and non-tidal waters? Ms. Pelletier noted she would not want to see the Board strike it. If the Board really wanted to strike it, she would say in non-tidal waters and leave the rest of it or if you want to address in non-tidal waters, you could go in Wayne's suggestion. The Board could either add in permanent and temporary or just strike the word temporary. The Board agreed to strike the word temporary.

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

Chair Kapala summarized what he is hearing. We take Wayne's approach and leave it alone but add except for the floats. Ms. Pelletier also specified that no temporary project shall be used for non-commercial uses shall be wider than 6 feet. Mr. Rouda feels it is a moot point on fresh water but suggested keeping it in there. Ms. Pelletier noted that the Board wants to strike the word temporary. Mr. Rouda suggested adding that the Coastal Waters Commission will rewrite their application for review and approval. Chair Kapala added that the part flagged for Council and DEP review is the haul-outs. Ms. Pelletier suggested saying, let's flag that and get some clarification from DEP and the motion could say you support whatever the guidance is from the Maine DEP is regarding the standard pertaining to haul-outs.

Chair Kapala listed the issues that have been brought up:

- Width of floats we have our proposed thing

- Haul-outs get flagged for DEP input

- Procedural stuff that will go back to Coastal Waters

- Width of water way is remaining and needs to define whether it is navigable

Mr. Rouda advised that the Board agreed that navigable is better but Ms. Pelletier had concern that she could not measure it. Ms. Pelletier asked Mr. Stenzel for guidance and he mentioned he would have to look it up. It is a common term. Ms. Pelletier advised that it is a Freeport standard and is going above and being more restrictive so she doesn't think the DEP will weigh in on that. This is the version from the Town Attorney. Chair Kapala pointed out that he has heard from the public as well as the Board that there is a better way than just one-quarter way between banks. He feels the Board needs to find somebody who can say whether or not there is a standard out there that is measurable and is different than that. Can we use a low water and define it in a way that is enforceable? That is really the question because the low water defines the navigable channel.

Mr. Arsenault the definition of navigable is can you put a boat through at low water and the definition of a boat is a canoe or kayak, etc. Chair Kapala feels the issue for enforcement is that annual high tide is a surveyable pin that is right there.

Mr. Becker added that half tide is a measurable point and explained where it starts and where you can always find it.

Chair Kapala feels it is an interesting point to talk about the waterway at mean low tide. He held up a drawing and explained it. Discussion followed. Mr. Stenzel added that he agreed with Mr. Becker that if you measure half tide, it will be in the same place all the time. It is not a measurement that most people think of.

Chair Kapala pointed out that we can all sit here and say, yes that makes perfect sense about what is half tide but if your neighbor builds something and you say I think it should have been 5 feet further that way. Can somebody in a court say is it enforceable? Is there an agreement sort of a broader than a common-sense agreement, is there an understood definition of what half tide is and it sounds like the Attorney who looked into this said no. Ms. Pelletier added that when they debated it, it was not clear in the enforcement concerns.

Mr. Rouda mentioned that the problem is that the channel is not necessarily half way between the banks.

Mr. Morse advised that he has worked with municipalities in the past and viewed towns struggling trying to develop certain unique language that is not in the State's Chapter 1,000 Rules for instance. There is another standard already in place that will be a limiting factor He asks Planning Boards or Towns are you spinning gears trying to come up with a new standard when there is already a standard in place. In this case it is the Army Corps of Engineers. He texted the language to Caroline earlier but it is something like a structure cannot extend more than 25% across the channel at mean low water or something to that effect. If the Town of Freeport opts to just keep the 125-foot length limit, it really doesn't matter where those 125 feet falls if the 125 feet would take a structure three-quarters of the way across a low navigable water channel. The Army Corps language will prohibit it anyway so he wonders if we already have non-Town of Freeport language that is beneficial for what you are trying to accomplish. It is just another perspective to consider.

Ms. Pelletier asked if Army Corps comes into tidal temporary and permanent? Mr. Morse mentioned tidal yes, temporary and permanent all of the above. Ms. Pelletier advised that it clarifies it and it gives us Municipal enforcement. Chair Kapala asked if the Board could strike the one that is in here and specifically reference the Army Corps standard? Mr. Rouda suggested adding this also meets the Army Corps standard. Mr. Ball feels that sounds perfect. What we don't want to do is have some threshold to meet and you meet it and then the Army Corps Engineer says, oops sorry, you can't. Chair Kapala did not realize the Army Corps had that jurisdiction. Ms. Pelletier added that putting that in the ordinance would give that added protection. If this is what Coastal Waters wants, and you put the language in here, other than a generic reference although she likes it, if Army Corps changes their standards, our standard on the books is still in place. She asked Mr. Morse to hold up the text again which he did. Chair Kapala suggested moving forward with adding the reference to the Army Corps to our document and we have said all the other stuff in the public record.

Ms. Pelletier noted that it still doesn't clarify the two points that you are measuring. Mr. Rouda mentioned that it says mean low water. It's going to be narrower but it will be the same thing, a quarter of that or a quarter of that. It will probably get you to the same place. Ms. Pelletier clarified what you would have from what Mr. Morse pulled up and what we have in front of us, the total length of a project from the highest annual tide line shall not exceed 125 feet, that's current standard, No part of the project, walkway, dock, platform, ramp or float may extend more than one-fourth of the way across the width of a water body or wetland at mean low water. Ms. Pelletier is not sure we are getting it right because you are saying at mean low water but you still don't have the measuring points in this language if that makes sense. Mr. Becker added that the intention is to go bank to bank when it gets narrow instead of having a cut-off point to when okay you can't go anymore. Ms. Child feels the Board is trying to craft a better definition than the Army Corps of Engineers. Mr. Morse explained that the DEP utilizes the waterway width that is just the width on both sides of the channel that is measured from the mean low water line. If there is no water at low tide, you would have a width of zero. You would not have a navigable channel at that point. Chair Kapala suggested that the Board go with the recommendation of one-quarter of the way across. Mr. Forrester made the point that it could result in some odd situations but it is more restrictive than the 125 feet. He stated that the 125 feet is always the maximum so at no point can you have a project longer than 125 feet. There are situations in which you are restricted by the quarter distance across from mean high tide. After all that, we can see this is a difficult one and is actually how the commission got as close as reasonable. Ms. Pelletier advised that 125 feet length on the books today is already measured from the highest annual tide. Chair Kapala added that if there are situations in which the one-quarter is more restrictive than the 125, then it is more restrictive. Mr. Ball admitted that he does not know a lot about this and is willing to accept the proposed amendment in faith that those folks are the ones that know this a lot better than he does.

Chair Kapala felt the Board spun its wheels enough and took a public comment that was a good comment and tried to make it better and it is more complicated than we realized. Ms. Pelletier advised that for the Coastal Waters amendments, the Board has the two changes that were given to you tonight. The permit application and all of the things in the project are considered structures. You have changing water frontage to shore frontage where it says in Freeport you need 60 feet. You are going to change based on Jeff's recommendation on Page 20 regarding the certified letters just to say proof that certified letters have been sent to abutters within 250 feet of the proposed project. That wording does not specify what that proof is. We heard from Jeff they are being pretty lenient taking a photocopy now. If you want to require anything specific, it was mentioned that proof will reflect current practice. On Page 21 8.A.4 except for the float portion of a project, no temporary project used for non-commercial uses shall be wider than 6 feet. We are not going to acknowledge tidal or non-tidal unless it is called by DEP unless we accidentally alter it in a way that is non-compliant. Ms. Pelletier mentioned that they had a really good discussion with the Town Attorney and Staff as well as representatives from Coastal Waters going around and around. They did not talk about additional restrictions but felt they needed to start somewhere and this was a good starting point and we could potentially tweak it or add to it. They have another concern that they don't want all these floats sitting in the mudflats either. The Board is going to advise that Staff get input from DEP regarding the width of the projects and the haul-out provisions regarding storage.

Mr. Arsenault asked if the commercial people had any problem with their floats and will we include them in the 6-foot floats? Ms. Pelletier asked Mr. Morse if DEP regulates commercial and non-commercial piers, docks, wharves differently

in tidal waters? Mr. Morse advised that commercial is not regulated or restricted in width or length like some of the residential docks, piers or floats. Ms. Pelletier feels it is better to keep that non-commercial and Board members agreed.

MOVED AND SECONDED: Be it ordered that the Freeport Planning Board recommends to the Freeport Town Council the adoption of proposed amendments to the Town of Freeport Coastal Waters Ordinance – Chapter 31, as discussed and presented at the 04/06/22 Planning Board meeting with amendments presented by staff and amendments pertaining to the width of projects and proof of certified mailing, to amend sections of the Ordinance to make them consistent with the minimum requirements of the State of Maine’s Mandatory Shoreland Zoning Act and that the proposal is consistent with the Town’s Comprehensive Plan Vision that Freeport would be responsible stewards of the environment by protecting environmentally sensitive areas. The Planning Board provides further guidance that Staff check with DEP regarding the language of the width of projects and haul-out provisions regarding storage and adjust the language as needed. (Ball & Child) **VOTE:** (6 Ayes) (1 Excused-Burwell) (0 Nays)

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

Ms. Child mentioned she did not know Greg Savona very well but every time she comes into this meeting room she will be thinking about him. She asked if the Board could call for a moment of silence before starting meetings. She feels it would be nice especially when we get into the minutia of the Planning Board. It helps her to remember the big picture and all the people that went before us. Other Board members agreed it would be nice. Chair Kapala feels it would be good especially in the case of Greg. We certainly appreciate new perspectives on the Board and also miss the perspectives of people that have been here for a while. It would be a good way to remember their contributions.

ITEM VIII: Adjourn.

MOVED AND SECONDED: To adjourn at 9 p.m. (Ball & Jortner) **VOTE:** (6 Ayes) (1 Excused-Burwell) (0 Nays)

Recorded by Sharon Coffin