

**-MINUTES**  
**FREEPORT PROJECT REVIEW BOARD**  
**FREEPORT TOWN HALL COUNCIL CHAMBERS**  
**WEDNESDAY, MAY 17, 2023**  
**6:00 p.m.**

**Attending:** Linda Berger, Jason Donahue, Lynn Hamlen, James Monteleone, Chair Ford Reiche, Tod Yankee and Town Planner, Caroline Pelletier

**Excused:** Brent Heesemann

Chair Reiche welcomed everyone and called the meeting to order at 6:10 p.m. He noted that there is a quorum tonight.

Ms. Pelletier announced that she received a request to table the application from L.L. Bean at 95 Main Street for a Design Review Certificate and Site Plan Review so it will be tabled from tonight's agenda. Chair Reiche wanted the minutes to reflect that this is his 43<sup>rd</sup> wedding anniversary and his wife is glad that the third agenda item is tabled.

**ITEM I:** Information Exchange

- 1) Update on Staff Approvals. Ms. Pelletier advised that she does not have any staff approvals to share with the Board. She does have two things for the Board. We had two requests for temporary activity permits because the requests for the temporary activity extends beyond three weeks before the Codes Officer can issue it, the Project Review Board has to note their concurrence with that being issued that they don't have any objections. The first temporary activity permit is for the Chamber. They want to do the car show across the street like they did last year. It will be once a week all summer on property owned by Linda Bean. The second one would allow the Town to put up a platform. It is actually repurposing a parklet platform from last year in Memorial Park so different community groups can use it to have concerts in Memorial Park between now and the end of October. If there are no objections on the two Temporary Activity Permits from the Board, the Codes Officer will be reviewing them tomorrow and is prepared to issue them. Mr. Yankee asked if there were any noise complaints last year? Ms. Pelletier advised that we did not get noise complaints. Meeting House Arts did a couple of concerts in the park last year but we didn't get any noise complaints down there.
- 2) Update on topics reviewed by the Planning Board. Ms. Pelletier explained that the Planning Board had a workshop meeting with the Housing Committee. That committee has been looking at land use ordinances in Freeport and ways to increase housing opportunities in town. They have been looking at things like Accessory Housing Units, revisiting density, locations and some other ways where we can encourage housing. They had an open conversation in a workshop format about the situation of housing in Freeport, some things the committee was considering and some things the Planning Board was working on. The Planning Board is going to be deep diving into the new state legislation referred as LD 2003 which is an act to create additional housing units in Freeport which we talked about last month. Many of you will probably be getting notices in the mail inviting you to participate in those

conversations and hearings in your own capacity.

- 3) Update on the Downtown Vision Task Force Implementation Group. Ms. Pelletier advised that the Task Force met but they really just talked about budget and continuing the charters in the budget process which the Council is deeply involved in at this point. After the June meeting and the budget is adopted, we will have more information to report on some of those charter items that came out of the Vision Implementation.
- 4) Update on the Town of Freeport Climate Action Plan. Ms. Pelletier explained that on Monday the Town of Freeport in officiation with GPCOG and the Freeport Sustainability Advisory Board hosted a workshop regarding Climate Action Planning in Freeport. As you know, we are working on the preparation of a Climate Action Plan. There were about 50 people at the meeting and there is a website, [www.freeport.climateaction.org](http://www.freeport.climateaction.org). You can go on there. Eventually there will be a recording of the meeting that Tom is working on. There will be some workshop materials that you can go and review. There is a survey. When anyone leaves tonight, there is also a hands-on mapping activity in the hallway where they are looking for feedback of areas of concern in Freeport where there are concerns for things such as different environmental impacts. There will be a second part of the workshop series in the fall. If you want additional information, visit the website or reach out. We now have a Sustainability Coordinator shared between Freeport and Yarmouth. Her name is Meddy Smith and works in the Planning Department and if you have questions or want to follow up, you can reach out to her.

**ITEM II:** Review of the minutes from the March 15th, 2023 & April 19, 2023 Project Review Board meetings.

**MOVED AND SECONDED:** To accept the Minutes of March 15 as presented.  
(Hamlen & Yankee) **VOTE:** (6 Yes) (1 Excused-Heesemann) (0 No)

Ms. Berger explained that she has a comment on the April 19 Minutes. She was not at the meeting but read the Minutes and found it strange in the Gritty McDuff section that it was discussed, moved and voted on and then there was additional discussion after it was all done. She found it unusual to have further discussion after it was done. Ms. Pelletier agreed and noted there was a lot of deliberation and the Board added conditions but the entire motion with the added conditions appear in the motion before the discussion so it clearly causes some confusion. Discussion followed. Ms. Pelletier referred to Page 11 and the Board could put the MOVED AND SECONDED with 1 and 2 at the top of Page 11 and it would be awkward if you break up the motion. You can either add conditions 3 and 4 on Page 13 or just have the motion entirely duplicated on Page 13 if you want so the whole thing as amended shows after discussion. The important thing is that the whole motion is there and it shows what you approved. It was a confusing conversation and the placement was confusing. Mr. Yankee suggested moving the ROLL CALL VOTE line to the end of the discussion on Page 13. Mr. Monteleone added that Conditions 3 and 4 were the result of the discussion. Mr. Yankee suggested moving the whole motion to Page 13 and put it at the end of the discussion.

**MOVED AND SECONDED:** To accept the Minutes that have just been discussed and revised.  
(Hamlen & Donahue) **VOTE:** (4 Yes) (2 Abstentions-Berger & Donahue) (1 Excused-Heesemann) (0 No)

**ITEM III: Reviews****Davis Properties – Design Review Certificate**

The applicant is seeking approval of a Design Review Certificate to replace and extend an existing concrete wall on their property. The new wall will be located in the same location, although be about twelve inches higher and extend further down Kendall Lane (on private property). The new wall will be constructed with retaining wall blocks. Zoning Districts: Village I, Freeport Village Overlay District, Design Review District I – Class B & Color Overlay District. Tax Assessor Map 12, Lot 56 (209 Main Street). Jonathan Davis, Davis Properties, LLC, applicant and owner.

Chair Reiche explained that this is before the Board because it is a Class B historic building which means it was built prior to 1930 in the Design District No. 1 and the applicant is making a material change and the materiality is limited to the extension of the wall.

Respectfully, Jonathan Davis explained that he is the owner of the Davis Properties at 209 Main Street Map 12, Lot 56. There are three components and there are different degrees of materiality. One is a change in the material. The existing wall as the exhibit shows, is a relatively aged concrete wall that is in the process of deteriorating. It is probably in 8- or 10-foot concrete sections that are capped. First, they have a change in material. They are proposing using the vineyard blend retaining wall blocks that are indicated in the materials they submitted. The second change would be the extension of that wall that right now is just at the stop sign on Kendall Lane at the Kendall Lane/Main Street intersection. If it was down Main Street to Kendall Lane and then about 12 ½ feet to the stop sign on Kendall Lane also shown on the sketches he provided. They are requesting permission to extend that wall approximately 46-50 feet down Kendall Lane to the Kendall Lane driveway onto the premises shown on Map 12, Lot 56. That is the extension part. The third component of their request is that the existing wall shown on their exhibits, at its vertical height was probably 24 inches tall and now it is leaning towards Main Street, and is now approximately 22 inches tall. They would like to raise that to a 36-inch height extending from the driveway on Main Street, down Main Street for approximately 50 or so feet and then down Kendall Lane approximately 50 or so feet. This is a material change, height change and extension in the request they are making. The exhibits especially towards the end of the materials show in yellow the location of the existing wall and show in pink the proposed extension. Some of the exhibits prior show the material options they have been provided by the various contractors they have engaged to provide them with estimates and their preference is to go with the vineyard blend. It gives more of a mixed stone appearance, almost a multi-colored granite-ish as opposed to a quarry line which is a much more uniformed color, almost a charcoal gray and it struck them as being almost too homogenous. If you squint, perhaps the vineyard gray looks almost like speckled granite. That is the basis for their request.

Ms. Hamlen mentioned the exhibit on the vineyard blend and asked if it was for color and the look of the stone? They are not adding towers? Mr. Davis agreed and explained that it is for color and the look of the stone. They understand the importance of maintaining the appearance of the Village Overlay District. They are not intending to add any towers. It will be a uniform height.

Mr. Monteleone wanted to confirm that along Route One there is no extension planned. The extension is off Route One. Mr. Davis agreed and referred Mr. Monteleone to Exhibit O which is an overhead view and that the vast majority of the existing wall is on the Main Street sideline. Mr. Monteleone asked if the placement of the wall would affect the placement of the stop sign at the corner? Mr. Davis advised that it should not and referred to Exhibit N that shows that the stop sign is

actually at the outside edge of the wall. The stop side is on the road side of the wall. He anticipates that the contractors will work around the stop sign but will coordinate with the Town's Highway Department.

Ms. Pelletier clarified that the stop sign should be in the right-of-way and the wall will be on private property. The applicant is actually having that line located by a surveyor to ensure that this wall will be entirely on his property. Mr. Davis added that the wall is theirs and they will be repairing the wall and in terms of the extension, he showed how the wall moves. He wished Kendall Lane was a straight shot but there is a bit of a curvature. He will not be doing this work before the survey but he will not be encroaching into the right-of-way. More discussion followed. Chair Reiche called for a motion.

**Design Review Ordinance: Chapter 22 Section VII.C.**

1. **Scale of the Building.** The scale of a building depends on its overall size, the mass of it in relationship to the open space around it, and the sizes of its doors, windows, porches and balconies. The scale gives a building "presence"; that is, it makes it seem big or small, awkward or graceful, overpowering or unimportant. The scale of a building should be visually compatible with its site and with its neighborhood.

*No changes to the building are proposed. Based upon this information, the Board finds that this standard has been met.*

2. **Height.** A sudden dramatic change in building height can have a jarring effect on the streetscape, i.e., the way the whole street looks. A tall building can shade its neighbors and/or the street. The height of buildings should be visually compatible with the heights of the buildings in the neighborhood.

*The height of the building will not be altered. Based upon this information, the Board finds that this standard has been met.*

3. **Proportion of Building's Front Facade.** The "first impression" a building gives is that of its front facade, the side of the building, which faces the most frequently used public way. The relationship of the width to the height of the front facade should be visually compatible with that of its neighbors.

*The proportion of the building's front façade will not be altered. Based upon this information, the Board finds that this standard has been met.*

4. **Rhythm of Solids to Voids in Front Facades.** When you look at any facade of a building, you see openings such as doors or windows (voids) in the wall surface (solid). Usually the voids appear as dark areas, almost holes, in the solid and they are quite noticeable, setting up a pattern or rhythm. The pattern of solids and voids in the front facade of a new or altered building should be visually compatible with that of its neighbors.

*The rhythm of solids to voids in the front facades will not be altered. Based upon this information, the Board finds that this standard has been met.*

5. **Proportions of Opening within the Facility.** Windows and doors come in a variety of shapes

and sizes; even rectangular window and door openings can appear quite different depending on their dimensions. The relationship of the height of windows and doors to their width should be visually compatible with the architectural style of the building and with that of its neighbors.

*The proportions of openings within the facility will not be altered. Based upon this information, the Board finds that this standard has been met.*

- 6. Roof Shapes.** A roof can have a dramatic impact on the appearance of a building. The shape and proportion of the roof should be visually compatible with the architectural style of the building and with those of neighboring buildings.

*The roof shape will not be altered. Based upon this information, the Board finds that this standard has been met.*

- 7. Relationship of Façade Materials.** The façades of a building are what give it character, and the character varies depending on the materials of which the façades are made and their texture. In Freeport, many different materials are used on façades - clapboards, shingles, patterned shingles, brick - depending on the architectural style of the building. The façades of a building, particularly the front façade, should be visually compatible with those of other buildings around it.

*No changes to façade materials are proposed. Based upon this information, the Board finds that this standard has been met.*

- 8. Rhythm of Spaces to Building on Streets.** The building itself is not the only thing you see when you look at it; you are also aware of the space where the building is not, i.e., the open space which is around the building. Looking along a street, the buildings and open spaces set up a rhythm. The rhythm of spaces to buildings should be considered when determining visual compatibility, whether it is between buildings or between buildings and the street (setback).

*Rhythm of spaces to buildings on the streets are not being altered. Based upon this information, the Board finds that this standard has been met.*

- 9. Site Features.** The size, placement and materials of walks, walls, fences, signs, driveways and parking areas may have a visual impact on a building. These features should be visually compatible with the building and neighboring buildings.

*The applicant is going to replace and extend an existing concrete wall on the property. The new wall will be located in the same location, although be about twelve inches higher and extend further down Kendall Lane an additional fifty (50) feet. As shown, the wall will be located on the applicant's private property, closely following the line. The new wall will be constructed with retaining wall blocks – "Vineyard Blend" in color. There is an existing set of concrete stairs that will be retained. Based upon this information, the Board finds that this standard has been met.*

- 10. In addition to the requirements of the Freeport Sign Ordinance, signs in the Freeport Design Review District shall be reviewed for the following: materials, illumination, colors, lettering**

style, location on site or building, size and scale. Minor changes that do not alter the dimensions or lettering style of an existing sign need not be reviewed, i.e. personal name changes for professional offices, or changes in hours of operation. See Special Publication: "Sign Application Requirements".

*No signs are proposed. Based upon this information, the Board finds that this standard has been met.*

**Conclusion: Based on these facts the Board finds that this project meets the criteria and standards of the Design Review Ordinance.**

**MOVED AND SECONDED:** that the Freeport Project Review Board approve the printed Findings of Fact and Design Review Certificate for Davis Properties, LLC., for alterations to an existing wall on the property at 209 Main Street (Tax Assessor Map 12, Lot 56), to be built substantially as proposed, application dated 05/01/2023, finding that it meets the standards of the Freeport Design Review Ordinance, with the following Conditions of Approval:

- 1) This approval incorporates by reference all supporting plans that amend the previously approved plans submitted by the applicant and their representatives at Project Review Board meetings and hearings on the subject application to the extent that they are not in conflict with other stated conditions. (Hamlen & Donahue)

Mr. Monteleone suggested adding an additional condition that approval is subject to a survey be provided to the Planning Office.

**MOVED AND SECONDED:** To amend the motion to include Condition No. 2) that approval is subject to a survey be provided to the Planning Office. (Monteleone & Berger) **(VOTE: 6 Yes) (1 Excused-Heesemann) (0 No)**

**VOTE ON AMENDED MOTION:** (6 Yes) (1 Excused-Heesemann) (0 No)

For people showing up on zoom, Ms. Pelletier advised that the third item for L.L. Bean has been tabled.

**Farrell & Elwell – Cunningham Road – Shoreland Stabilization**

The applicant is seeking approval for a Shoreland Zoning Permit (for Shoreland Stabilization). An area of approximately one-hundred twenty feet in length will be stabilized with rip rap. The area of rip rap will extend about two to three feet above the Highest Annual Tide (HAT) line. Zoning Districts: Medium Density Residential I (MDR-1) and Shoreland Area (SA). Tax Assessor Map 5A, Lot 28 (33 Cunningham Road). Christine Farrell and Robert Elwell, applicants & owners; Tim Forrester, Atlantic Environmental, representative.

Before Mr. Forrester begins, Mr. Yankee asked if he could pull up Google Maps and use that as a reference point to help him. Ms. Pelletier advised that if he is going to pull it up during the meeting, it would be best to share it on the screen and offered to teach him how to do it. Mr. Yankee added that he knows that it is not a matter of record but it is a reference point that is publicly available. Mr. Monteleone suggested that the record reflect that the review of these public images is part of what was considered. Ms. Hamlen mentioned that she finds it is helpful for her to know where it is.

Tim Forrester of Atlantic Environmental is here on behalf of Christine Farrell and Robert Elwell of 33

Cunningham Road in Freeport. The applicants have owned the property for more than ten years and there was some existing rip rap along the shore line and they also added a small ramp to provide them access to a gravelly shore in order to carry their kayaks down to the beach. The elevation of that wall was very low and behind it there is lawn area and it is frequently overtopped because it was not built high enough and there has been additional erosion along the eastern side of the property that was previously stabilized. They would like to remove the rock that is there. It was not built the way it should have been built in his opinion. Typically, you are burying your toe stones to at least half their size so they can't be undercut and they should be large regular rip rap to 2, 3 or perhaps as big as 4 feet in size. They would like to take out what is there and replace it with something better and raise the elevation a little bit. On the uphill side of that they would backfill it. It is currently lawn but they will add shrubs and additional vegetation to create a vegetated buffer behind that wall. Last, they will put that little seasonal walkway back in place but will actually move it up at the head of the cove so that it lands on the gravel area as opposed to landing on the salt marsh area. The project goes before the DEP and the Army Corps of Engineers. They also went to Coastal Waters because of the walkway down into the resource. They do have an Army Corps permit but DEP is still short staffed and they have not yet issued a permit for this.

Ms. Pelletier added that she has had conversations with DEP and there is some hesitation to possibly shifting these to the purview of the Staff Review Board but they are open to coming during daytime hours and doing some Board training for Shoreland Zoning and applicability as it pertains to duties.

Ms. Berger asked if it would give the Board rights to say yes or no? Ms. Pelletier advised that the Board would have to follow the same State Shoreland Zoning Rules but the permit he is talking about from DEP is not a Shoreland Zoning Permit. It is a Natural Resource Protection Act Permit which is a different division of DEP with its own rules and the different things that they do.

Ms. Berger asked if there is a need to have equipment and heavy materials used to go down to this area? Is it already graveled or whatever it needs to be for heavy equipment? Mr. Forrester explained that for the most part, coming off the driveway, it is lawn down through almost the entire area. It is mostly lawn area behind the wall so all equipment access and equipment will be in the upland during construction. Mr. Monteleone asked if there will be any tree cutting as part of this design? Mr. Forrester advised that there is not.

There were no further questions from the Board or the public. Chair Reiche called for a motion.

Section 306 of the Town of Freeport Shoreland Zoning Ordinance ([050322 chapter 65 shoreland zoning ordinance adopted.pdf \(freeportmaine.com\)](#)) has standards for the various allowable Shoreland Area land uses. These are the standards under which the Board must review the application.

In addition to municipal review, permitting from both the Maine Department of Environmental Protection (Natural Resources Protection Act Permit) and the Army Corps of Engineers are required. The applicant is aware of this and those applications have been submitted to the applicable agencies. Those agency reviews are independent of the Board's process with their own standards and should either of those agencies require substantial changes, the applicant may need to return to the Project Review Board for additional review and approval.

**Proposed Findings of Fact – Chapter 65 Town of Freeport Shoreland Zoning Ordinance - Section 306.**

## Land Use Standards

Notwithstanding the standards of the underlying zoning district(s), all land use activities within the Shoreland Zone, shall also conform with the following provisions if applicable:

### A. Space Standards:

*Not applicable as no structures or changes to the lot are proposed. Based upon this information, the Board finds that this standard has been met.*

### B. Principal and Accessory Structures

*Not applicable as no structures or changes to the lot are proposed. Based upon this information, the Board finds that this standard has been met.*

### C. Piers, Docks, Wharves, Bridges and Other Structures and Uses Extending Over or Below the Normal High-Water Line of a Water Body or Within a Wetland

*Not applicable as no Piers, Docks, Wharves, Bridges and Other Structures and Uses Extending Over or Below the Normal High-Water Line of a Water Body or Within a Wetland are proposed. Based upon this information, the Board finds that this standard has been met.*

### D. Campgrounds.

*Not applicable as no campgrounds are proposed. Based upon this information, the Board finds that this standard has been met.*

### E. Individual Private Campsites.

*Not applicable as no individual private campsites are proposed. Based upon this information, the Board finds that this standard has been met.*

### F. Parking Areas:

*Not applicable as no parking areas are proposed. Based upon this information, the Board finds that this standard has been met.*

### G. Roads and driveways

*Not applicable as no new roads and driveways are proposed. Based upon this information, the Board finds that this standard has been met.*

### H. Signs:

*Not applicable as no roads and driveways are proposed. Based upon this information, the Board finds that this standard has been met.*

### I. Storm Water Runoff

1. All new construction and development shall be designed to minimize storm water runoff from the site in excess of the natural predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas shall be retained in order to reduce runoff and encourage infiltration of storm waters.
2. Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.

*No changes resulting in an increase of stormwater run-off are proposed. The applicant installed rip rap to stabilize the eroding shoreline. Based upon this information, the Board finds that this standard has been met.*

**J. Septic Waste Disposal**

*Not applicable as no septic waste disposal systems are proposed. Based upon this information, the Board finds that this standard has been met.*

**K. Essential Services**

*Not applicable as no new utility connections are proposed. Based upon this information, the Board finds that this standard has been met.*

**L. Mineral Exploration**

*Not applicable as no mineral exploration is proposed. Based upon this information, the Board finds that this standard has been met.*

**M. Agriculture**

*Not applicable as no agriculture is proposed. Based upon this information, the Board finds that this standard has been met.*

**N. Clearing of Vegetation for Activities Other than Timber Harvesting**

*No clearing of trees or vegetation will be required for this project. Based upon this information, the Board finds that this standard has been met.*

**O. Hazard Trees, Storm-Damaged Trees, and Dead Tree Removal**

*No Hazard Trees, Storm-Damaged Trees, and Dead Trees will be removed with this project. Based upon this information, the Board finds that this standard has been met.*

**P. Exemptions to Clearing and Vegetation Removal Requirements**

*No clearing of trees or vegetation will be required for this project. Based upon this information, the Board finds that this standard has been met.*

**Q. Revegetation Requirements**

*The area behind the rip rap and any disturbed areas that will not be covered with rip rap, will be loamed and native plantings will be installed per the plan included in the submission. Based upon this information, the Board finds that this standard has been met.*

**R. Erosion and Sedimentation Control**

*The applicant installed rip rap to stabilize the eroding shoreline. No other erosion control was installed for this project. Based upon this information, the Board finds that this standard has been met.*

**S. Water Quality**

*No activity shall deposit on or into the ground or discharge to the waters of the State any pollutant that, by itself or in combination with other activities or*

substances, will impair designated uses or the water classification of the water body, tributary stream or wetland.

*The applicant will install rip rap to stabilize the eroding shoreline which should improve the water quality by reducing sediments runoff from the land. Based upon this information, the Board finds that this standard has been met.*

#### **T. Shoreline Stabilization**

Vegetation may be removed in excess of the standards in Section 306.N of this Ordinance in order to conduct shoreline stabilization of an eroding shoreline, provided that a permit is obtained from the Project Review Board. Construction equipment must access the shoreline by barge when feasible as determined by the Project Review Board.

- (a) When necessary, the removal of trees and other vegetation to allow for construction equipment access to the stabilization site via land must be limited to no more than twelve (12) feet in width. When the stabilization project is complete the construction equipment accessway must be restored.
- (b) Revegetation must occur in accordance with Section 306.Q

*The applicant installed rip rap to stabilize the eroding shoreline. No clearing of vegetation will result from this project. The area behind the rip rap and any disturbed areas that will not be covered with rip rap, will be loamed and native plantings will be installed per the plan included in the submission. Based upon this information, the Board finds that this standard has been met.*

#### **U. Soils**

All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses, shall require a soils report based on an on-site investigation and be prepared by state-certified professionals. Certified persons may include Maine Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties. In addition, if an on-site investigation for a septic system is needed, a Maine Licensed Site Evaluator shall submit a required report. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed design to counteract soil limitations where they exist.

*This is a shoreline stabilization project and no new land uses are proposed. Based upon this*

*information, the Board finds that this standard has been met.*

#### **V. Archaeological Sites**

Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on, the National Register of Historic Places, as determined by the Codes Enforcement Officer, during the required review process, shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment at least twenty (20) days prior to action being taken by the Codes Enforcement Officer who shall consider comments received from the Commission prior to rendering a decision on the application.

*There are no known adjacent to sites listed on, or eligible to be listed on, the National Register of Historic Places. The Board finds that this standard has been met.*

**Conclusion: Based on these facts the Board finds that this project meets the criteria and standards of the Town of Freeport Shoreland Zoning Ordinance.**

#### **Proposed Findings of Fact – Chapter 65 Town of Freeport Shoreland Zoning Ordinance - Section 404. Administering Permits**

The Project Review Board, the Coastal Waters Commission, or the Codes Enforcement Officer shall approve an application for a permit, only upon finding that the use, activity or structure complies with all requirements of this Ordinance and that it meets the following criteria:

1. Will maintain safe and healthful conditions;
2. Will not result in water pollution, erosion, or sedimentation to surface waters;
3. Will adequately provide for the disposal of all wastewater;
4. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
5. Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
6. Will protect archaeological and historic resources as designated in the comprehensive plan;
7. Will not adversely affect existing commercial fishing or maritime activities in a Marine Waterfront District;
8. Will avoid problems associated with floodplain development and use; and
9. Is in conformance with the provisions of Section 306, Land Use Standards.

*The project is for shoreline stabilization at a residential property on Cunningham Road. The project was designed to minimize impacts to the coastal wetland, however resulted in about 330 square feet of impact. No vegetation was required to be removed for this project. The area behind the rip rap and any disturbed areas that will not be covered with rip rap, will be loamed and native plantings will be installed per the plan included in the submission. There are no known adjacent to sites listed on, or eligible to be listed on, the National Register of Historic Places. The property is not within the Marine Waterfront District and there is no public access to the water. Based*

*upon this information, the Board finds that this standard has been met.*

**Conclusion: Based on these facts the Board finds that this project meets the criteria and standards of the Town of Freeport Shoreland Zoning Ordinance.**

**MOVED AND SECONDED:** that the Freeport Project Review Board approve a Shoreland Zoning Permit for Christine Farrell and Robert Elwell, for a Shoreline Stabilization Project (approximately 120 feet in length) at a residential property at Tax Assessor Map 5A, Lot 28 (33 Cunningham Road), to be built substantially as proposed in an application dated 03/21/23, finding that it meets the standards of Section 306 & Section 404 of the Town of Freeport Shoreland Zoning Ordinance, with the following conditions of approval:

- 1) This approval incorporates by reference all supporting plans that amend the previously approved plans submitted by the applicant and their representatives at Project Review Board meetings and hearings on the subject application to the extent that they are not in conflict with other stated conditions.
- 2) Prior to the start of any sitework for the project, the applicant obtain any applicable permits from the Freeport Codes Enforcement Officer. (Yankee & Hamlen) **VOTE:** (6 Yes) (1 Excused: Heesemann) (0 No)

**L.L. Bean (95 Main Street)– Design Review Certificate & Site Plan Review** (Tabled by applicant request.

**ITEM IV:** Discussion of Rules of Order and Procedure of the Freeport Project Review Board.

Ms. Pelletier explained that she did not include anything in the packets but did research it and found what Mr. Monteleone was talking about for Biddeford and the way that they do things in a different order than it seems like the Board was interested in pursuing where the public asks their questions before the Board does. If it is something the Board wants to pursue, it is not how our attorney explained it before that we could or should do it but if someone else is doing it, she would be happy to ask the question and see if we could make it work for Freeport if that is the intent of the Board.

Mr. Monteleone explained that the issue we are looking at is the layout of structured meetings in which there is public comment and which the applicant presents their materials and any opposition would be able to present their materials followed by public comment on whatever they wanted to comment on and then followed by the Board being able to ask questions of any of these categories of discussion in hopes that 1) demonstrate hearing from anyone before reaching any kind of conclusion and 2) increase the efficiency of not having multiple ways of questioning. If we all take time questioning the applicant and we then let the public comment, and then new questions arise at the public comment then we are potentially going back to the applicant for clarification about those questions. By changing that sequence, we can just do it all at once.

Ms. Berger added that she does not want to limit going back to the applicant. Mr. Monteleone doesn't feel it limits it at all but what he has experienced is that often there are two bites to the apple because if we start with questions, there is almost always some secondary questions after the public comment happens. He would propose this as a means of proceeding information for anything in which the public is here to communicate with us on.

Ms. Berger shared her experience out of the state where there are times where the public is allowed to speak as in a public hearing, there are specific rules that have to be followed where we are asking the public if they have any comments. In her background it is somewhat unusual that in many places the public was not allowed to speak unless it was considered a public hearing. She feels there may be two sets of rules and if we want to do this, we might want to separate things. She assumes that public hearings have to have a certain set of rules that have to be followed as far as having the public speak and maybe not how many times but at least if everyone wants to speak. She knows that this last time there were people that wanted to come back up and make additional comments. From a legal standpoint she would like to know if it is appropriate to let them come back up again and allow that to happen again. Chair Reiche advised that the Board can limit whether someone speaks more than once and how long they can speak. We would have to do it for the whole meeting.

Mr. Monteleone advised that these procedural rules are the rules that govern public comment. Mr. Yankee mentioned that he learns through the questions and informs himself through the way we are doing it now. While it might be frustrating for that, he thinks it serves us well and he doesn't think the Board will benefit from much more time savings by having just one bite of the apple, if you will. He does like to be able to ask the applicant up front listening to comment and having the opportunity for questions again. It is helpful for him.

Ms. Hamlen noted for the edification of people coming to hear us speak and ask questions first, we may be able to answer some of those questions by virtue of going back to the applicant on their behalf and it could cut down the public hearing time but by virtue of the fact that we addressed their question as a Board. There is something about their getting a sense of how we have studied it, how we are looking at it and how we approach it based on our rules and regulations. We can't talk about certain things because it is not within our purview. It is not our issue. There is something about taking our responsibility to explain how we are coming to this first and then people responding. That is how it is working now. She sees the point about not doing it twice. Mr. Monteleone disagreed based on watching the hearings we have had recently and what this demonstrates is that the people are taking time out of their day to come and communicate their opinions about issues. They are not here to hear our opinions on issues, they are here to express themselves and be heard. What we have seen is that they express their sense of frustration on how long they must sit here before they can say their piece on what they are here for. He thinks it is a lot to ask if we are going to push that public comment to the very end of the proceeding. That also means they are sitting here to say their piece but are waiting for us to do so first.

Ms. Pelletier displayed a snapshot condensed from Biddeford on how their rules work for the sequence and time allotted. She noted that she has not gone through it with the Town Attorney. Chair Reiche added that "F" is where we would plug in on that chart.

Mr. Yankee mentioned watching a Town Council meeting where they followed a process similar to this for at least that meeting and he was curious and was happy to hear that they opened it up for the Council to voice an opinion or ask questions. He found it helpful for him in trying to frame his questions going back to Lynn's point as a public person. Sitting up here, it is helpful for him to hear what people's comments are and to go back and reframe his thinking.

Peter Anzuini of South Freeport explained that the last time he was here there were a lot of people and a lot of arguments. He wanted to come back and see a normal process. He found the Board's discussion interesting. The difficult part for the people on the other side of the podium is that when

somebody makes the point of what they are trying to do and the public is sitting there and either agrees or disagrees to that point, the most frustrating part for them is for them to come up here and say something they are impassioned about and all of a sudden, the Board makes a different statement or a different decision that kind of says it is really not worth a comment. This Board doesn't say it intentionally but you will come back and make a statement that will potentially negate the person's statement that they are trying to make. He feels it is helpful for the public sitting there saying we have heard the proposal and would like to get an initial view from the Board because we might be addressing that proposal but we are also addressing you and trying to convince you that our point is valid. We are having a conversation about how we like this, or we don't like this and we hear somebody say yes, it is good because of this, this and this. He is sitting there and saying he is really opposed to it and wants to convince whoever is making those statements so he is going to try to sell the Board that. If you don't allow that, what happens is that people are going to try to get up two or three times to refute what the statement was to make their point. This is how he sees the interaction and he sees it at the Council and primarily at most meetings because the public is coming up here and trying to convince the Board that this is good or bad. He does not know how the Board fits its opinion so until the Board gives him their opinion, he can't include you in his rationale or not include you.

Chair Reiche thanked him and clarified that Mr. Anzuini's preference is the way our rules are written presently. He added that he likes them the way they are written because when we are having a public hearing, we are dealing with an applicant who has already been before us so it is a continuing discussion. He has always been comfortable getting our questions out early on updates, etc.

Ms. Pelletier pointed out that the Board is different than the Council because it is quasi-judicial. They function differently. When they have a formal public hearing, the Manager will introduce the item. They will open and close the public hearing after taking their comment. Sometimes the Staff is there to present after the public hearing. Sometimes they will present before but they deliver right after the public comment. Sometimes sitting on the other side, she finds it helpful to hear what you are going to talk about and what you are going to say because it does spark more questions. She thinks it depends on the situation and the topic and the people in the room. What works for Lynn might not work better for her. At the end of the day, it is really important that we have a clear process we can work on when we don't have controversial items in front of us and we can get this policy circulated so when people do want to come in, even if they don't like them, at least they know what the steps are.

Ms. Berger feels that when there is a public hearing on an application, what she always thought was said was that the people from the audience are not supposed to be addressing the applicant. They are supposed to be addressing us and if we get people making all their questions so the applicant goes first in the public hearing and people from the audience have their questions that they are asking. Everybody should be addressing us. It seems to her to be a benefit to allow all that to happen. She takes notes and then there is a list of things that she knows we, as a Board, can answer or maybe ask for clarification. That is a process in a public hearing that has a method from start to finish in the public hearing and it seems clean because we are getting all the questions and we are doing the answering or the re-questioning and it is over when it is over. To her, it seems there has to be a start and finish to the process. Chair Reiche stated that Ms. Berger is technically correct in the way it is written. Questions come through the Chair from everyone on the Board first and then the public comes through the Chair for the applicant. That is the way it is written though we tend to be informal.

Mr. Yankee added that Linda mentioned public hearing and he thinks we have an informal public hearing or public questioning. It is not a formal hearing but he thinks the Board follows the same sort of process in general but we don't technically open it as a public hearing. We ask for input.

Ms. Pelletier advised that the only time the Board holds a formal public hearing is for Subdivision and Design Review in large applications otherwise, your practice is to take public comment. When you do a formal public hearing, you open and close it and put an ad in a newspaper. Otherwise, you function to always take public comment. When we brought on our new Town Attorney, she found it very interesting because a lot of towns only take public comment when they have a hearing. It is in your rules and your practice can lead to large meetings. Ms. Hamlen noted she is not someone that says this is how we always have done it but there must be a reason why so many towns do it this way whether by trial and error over the ages or Robert's Rules, whatever the source. There is a reason it goes in that order because it has worked.

Ms. Berger feels there has to be a distinction between public hearings and allowing public comment. Chair Reiche explained the distinction in his mind is if we are having a large Site Plan Review application or Subdivision application, we follow the rules rigidly. On the other stuff, we are just winging it. We ask if anyone has something to say and he doesn't see any harm in it. Ms. Berger feels it is fine for the Board to get some other opinion if it is there and if opposition on the other side of the table to also be able to let it out and it gets the applicant a chance to hear basically all sides if there happens to be other sides. She feels it is fairness and it comes across better but she does think the public hearing stuff we really need to do it in a way that has an order and doesn't get crazy.

Ms. Pelletier added that it sounds like the majority of the Board would prefer to keep it as it is but she hasn't heard from Mr. Donahue. Mr. Donahue explained that he was initially intrigued by the idea of having a more forward information gathering process that would help us form from what we see on paper and what we hear from the applicant and the buzz of the room. It would make sense rather than chewing on it but the comment was interesting about how there was a dance going on between us being here and folks being out in the chairs and folks coming up to the podium and more reading people's disposition toward the subject as an interesting social trauma to it but has been part of our process and has been intriguing in that sense. He is inclined to keep that in place and let it play out as a level of responsiveness. The other curious thing about the whole public comment or hearing is that we hear from the public and somewhat absorb that internally and discuss it among ourselves but it isn't like we are trying to hammer out a consensus between someone who is saying absolutely not on one side and someone else saying absolutely yes on the other side. We are really finding a path through the way the ordinance standards are written for what the outcome is. He knows that for some people such as family members of his, they find that process to be lacking in terms of the fact that you could get up there and say what you have to say and then there is no discussion about it after that.

Ms. Pelletier added that the Board has a job and you have a very thick book and you have an application. Sitting up here you know the standards you have to stick to so for example, affordable housing, a lot of people would love to regulate that but we don't have a standard so you know if those comments are made, it is not something you can go into but the person making the comment doesn't always understand that. She uses that because it is an easy example but there are all sorts of things that are impacting your everyday life that you would like the Board to be able to regulate but you know you can't so it is hard.

Mr. Yankee feels it is also helpful too for someone to get something in the public record. Ms. Pelletier agreed and feels it is valuable to hear the public comments. As far as that Rules of Order document knowing we have an item tabled tonight, she had another U.S. Route One North applicant that was almost ready to come back. She has another couple of people that might come back next month so in June the Board could have a pretty full agenda potentially. The intent awhile back we had some legal work done on the Rules of Order and there were quite a few changes. We had some stuff the Board had talked about in the past. Her intent was to mark up a version and bring it to the Board for consideration. If you have a packed agenda next month, she will not do that. The Board has also raised some questions tonight so you all got an e-mail today with an agenda for a meeting on the 24<sup>th</sup>. It is just a workshop and we will sit down and review the ordinances, go through and ask generic ordinance questions and look at the setup and go through some of the standards and dig in how we are doing some of the findings for the different kinds of things that you do. She thinks a good follow-up to that could be another legal workshop with the Town Attorney so as we ask some of these questions, or if we want to get clarification, we might want to revisit our process and be keeping a mental list because if we have enough stuff, she would be happy to bring in the Town Attorney.

Mr. Yankee asked if we could also open it up to Coastal Waters for some of these discussions and workshops because Coastal Waters is both judicial and legislative. Ms. Pelletier noted they could come to any meeting but the next workshop will focus on the Board's three ordinances. They could definitely come to a legal workshop if we do it.

Mr. Yankee wanted to go back to the Board's procedures and noted one thing he would throw out there and he does not know if it makes it into the rules but if someone is thinking they would like to make an amendment or change something, it would be helpful if it was made up front before someone makes the motion so then we have to make an amendment. If it is important to throw that out for discussion purposes so that when an amendment is made, we can just make the motion with the good idea in place and save time. Chair Reiche added that it would not hurt to do that because we know what the printed motion is. Ms. Pelletier pointed out that if we have everybody in the room, the best practice is that we fully read the motion. It is your motion so you can tweak it but we are having issues making motions on the fly and leaving out conditions or not adopting the printed legal findings or things the Board should be legally doing so you can tweak but there are certain things she wants to be sure are being checked off that are incorporated into the printed motion. If we have people on zoom, especially applicants and board members, the reason we are reading the full motion is because they can't just walk into the room and grab the Staff Report and see what is there. Mr. Yankee asked if she is suggesting the Board read it every time whether we are all here or not? She feels it would be the best practice.

Ms. Berger asked if the Board should bring all their books to next week's workshop? Ms. Pelletier advised that if the Board wants a digital version of all the ordinances that are on line, she can mail the links to all of them. If anyone wants a printed version, let her know now.

Chair Reiche suggested the Board give some thought to going paperless. In his experience, this is the only organization he is involved in that is not digitized and feels we will have to do it sooner or later and he would prefer to do it sooner. He would like to discuss it at the next meeting but asked Board members to be thinking about it. According to Caroline, we would be the first Board to do it.

Ms. Berger advised that she likes to have the information on paper. That is how she works and feels she is too old to change her life now but she also does not have a computer that she can work on

here. If it is going to be a requirement, that is one thing but if it is a recommendation, that is great. Chair Reiche is certain that the day will come when it will be a requirement but suggested talking about it at the next meeting. Ms. Berger mentioned that she does not mind having things sent to her on her home computer and she will print out whatever she is interested in printing and she will bring in all her sheets and does not want to be shunned. Ms. Pelletier agreed it is a challenge and mentioned that everything that comes in to the Board, she is keeping two copies. She wanted to go on record as liking paper plans. Ms. Hamlen seconded that. Ms. Berger explained that she requests that the paperwork for her be left at the Town Office so she can pick it up and save postage. She would rather pick it up or keep it digital. She feels it helps the Town budget.

Ms. Pelletier suggested that if someone is not going to be at a meeting, they won't be given a paper packet. They will get a digital packet and asked if everyone is okay with that? Board members did not voice any opposition. Mr. Monteleone mentioned the only exception to the electronic files is the full sheet plans and the Board usually gets scans of them which are low quality. Ms. Berger added that the scans are not exactly accurate if you measure them for yourself.

Ms. Pelletier asked if anyone other than Ford would be willing to go fully digital on the packets? Mr. Yankee and Mr. Donahue indicated they would. Chair Reiche pointed out that if other Board members can live with picking up their files on Monday, it would help. Mr. Donahue asked if the Board can come into Town Hall and look at the physical copies and Ms. Pelletier replied that there are always copies here and we always have full-sized drawings here.

Chair Reiche recollected that Portland will not accept paper. They insist on everything being digital. Ms. Pelletier added that Code Enforcement is all digital now. Ms. Hamlen added that her only problem is if she is away and whether or not her computer can deliver on an island. She mentioned that she could not get all the L.L. Bean stuff. Ms. Berger feels it is easier to move around on paper rather than scrolling. Ms. Berger advised she will be away in June and cannot participate on zoom. Ms. Hamlen is assuming she can zoom for the June meeting.

Mr. Monteleone wanted to remind the Board that it punted its opportunity to talk to the Council and he wants to keep it in mind. Ms. Pelletier added that the Board has some time because the Council is in budget through the end of June.

Ms. Pelletier asked the Board to keep the information on L.L. Bean.

**MOVED AND SECONDED:** To adjourn at 7:18 p.m. (Yankee & Berger) **VOTE:** (6 Yes) (1 Excused-Heesemann) (0 No)

Recorded by Sharon Coffin

**ITEM V:** Adjourn.