

**- PLANNER'S NOTES -**

**Town of Rockport, Maine  
Ordinance Review Committee**

Thursdays at 8:00 a.m.  
Ongoing through March 2016

Richardson Room @ Town Office  
101 Main Street, Rockport ME 04856

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Last Revised: March 11, 2016

The following will serve as a record of the Ordinance Review Committee (ORC) proceedings on its 2016 Work Plan. The Work Plan was approved by the Select Board on November 9, 2015.

**TIMELINE**

Upcoming milestones include two public hearings on April 6 and April 11, 2016 held by the Planning Board and Select Board, respectively. Advertisements for these public hearings will be published beginning on Thursday, March 17 and will state “draft language of proposed ordinance amendments is available for review...” or words to that effect, so the 17th could be considered the deadline for the initial drafting of any ordinance amendments to be voted on at Annual Town Meeting.

As I understand it, revisions are permissible right up to the close of the Select Board public hearing on April 11. Accordingly I have recommended to the ORC that regular meetings on the 2016 Work Plan continue through Thursday, March 31. This time could be used for anticipated review of the Road Acceptance Ordinance, new items 12 and 13 below or other work which may be delegated to the ORC by the Select Board in the meantime.

**ADMINISTRATIVE NOTES**

All ORC meetings take place at 8:00 a.m. on Thursdays and are open to the public. However no formal minutes are taken and public comment is heard only at the discretion of the Chair. Public participation is encouraged at the Select Board and Planning Board public hearings.

At its organizational meeting on November 19, 2015 the ORC reviewed its membership, officers and procedures as follows:

2016 Voting members:     John Alexander; Will Gartley; Larry Goldman; Terri Mackenzie;  
  Mark Masterson; Richard Remsen; Molly Sholes; and Steve Smith.

2016 Slate of officers:     Richard Remsen for Chair and Steve Smith for Vice-Chair.

Motion:                     John Alexander

Second: Molly Sholes  
Voted: Unanimously in favor  
Select Board Liaison: Ken McKinley

To simplify administration of the fast-paced ORC season, weekly Agendas and the overall Work Plan are one and the same this year. In other words, the ORC simply started at the top of this list and moved down when ready, in the order of the Select Board's priority rankings.

## 2016 WORK PLAN STATUS

- 1. Maine Uniform Building and Energy Code (MUBEC).** At its meeting of November 19, 2015 it was decided that the ORC would recommend adoption of MUBEC – all except the Energy provisions or “minus the E” (aka MUBC).

Motion: Will Gartley

Second: Molly Sholes

Voted: Unanimously in favor

Rationale: JA – reported to the ORC on the previous evening's Planning Board workshop.

JF – third party inspectors (TPI) shift costs but do not add value and are required to make problematic hand-offs to CEO's anyway.

WG – CEO fields property owners' questions day by day. TPI won't.

KM – cost sharing with Camden has precedent, could be arranged.

KM – cost should not go into ORC rationale for recommendations, is addressed later by Budget Committee, Select Board and voters.

- 2. Section 913 – Downtown setbacks, lot area and height challenged by DEP within 250 foot Shoreland Zoning setback.** At its November 19 meeting it was discussed that several Rockport zoning amendments dealing with shoreland areas had never been submitted for the required review and approval by DEP. With respect to Section 913, it was decided that the Town should push back / negotiate with DEP to add the greatest possible amount of development potential to all of the affected lots – as close as possible to the language approved at the 2015 Annual Town Meeting.

At several subsequent meetings, including January 14, January 28 and February 4, 2016, the Committee worked through many practical implications of this strategy. Notably, the Committee found several problems with the linkage between the 2015

and older versions of the standards and uses in the text on the one hand and the standards and uses in the new (since 2014) Land Use and Dimensional Tables of Sections 917 and 918 on the other.

On some issues, this work fell within the anticipated “clean-up” scope of work for this proposed amendment to Section 913, filling in blanks and making clarifications. On others issues, new standards and criteria had to be added. For example, the maximum height of 50’ approved as of 2015 Town Meeting was further defined as being measured from existing grade at the uphill side of the building. The Committee also found it necessary to correct entries in the Land Use Table for a few other zoning districts, e.g., minimum setbacks in the Section 906 and 907 districts.

The Committee did its best not to go beyond “clean-up” edits and the minimum of new standards and criteria necessary to accurately translate the language adopted at the 2015 Town Meeting language into a more coherent presentation in the Land Use and Dimensional Tables in Sections 917 and 918.

An objection was raised by Mike Sabatini at multiple meetings. Mike noted that the 2014 LUO had left one lot off the list of parcels to be included in the 913\* area, namely 5 Main Street, which is the smaller Fish & Ships building (formerly the Sail Loft) half-way up the hill to Central Street (Map 29 / Lot 291-001). He suggested that this parcel was added to the list in error in the 2015 LUO and that its inclusion in the 913\* area has adversely impacted the development potential of vacant property on Central Street, due to potentially diminished views of the Harbor.

However, it was the recollection of those who participated in the 2015 ORC season that 5 Main Street (29/291-001) was included intentionally. Additionally, some members indicated that they would object to zoning district boundaries being drawn effectively with a “doughnut hole,” or appearing to single out one property for more restrictive standards, as had been the case with 5 Main Street prior to 2015. Taylor Allen and Sam Temple also attended multiple meetings on behalf of Fish & Ships and/or Rockport Marine. Taylor Allen indicated his preference to retain as much as possible of the increased development potential conferred upon this lot by the voters at the 2015 Town Meeting, as recommended by the ORC.

It was agreed that the Committee could revisit two related questions in the near term:

- 1) The alternative standards adopted at 2015 Town Meeting are now proposed to be shown in the Land Use Table as a separate column with an asterisk: (913\*). However, the ORC questioned whether or not it would be useful to draw a new boundary around the affected parcels and renumber this area as its own distinct zoning district with a separate purpose statement.
- 2) It was suggested that an even smaller grouping of parcels – only those associated with the “working waterfront” like Rockport Marine – should have different, more restrictive standards and uses. These might include: a

compromise on maximum allowable height (as suggested by Mike Sabatini) or a different, more limited list of permitted uses (such as prohibiting condos/hotels as suggested by Alex Armentrout).

The Committee recognizes that “negotiations” with DEP may draw the Town into resolving these questions based on DEP’s requirements for consistency with the intent of the Mandatory Shoreland Zoning Act.

At the ORC’s March 3 meeting only three committee members were present along with two other frequent attenders. They decided to recommend the proposed amendment to the Select Board as presented.

Motion: John Alexander

Second: Steve Smith

Voted: Unanimously in favor.

Rationales for and against noted above.

**3. Sewer Ordinance – Clarifications, fee structure, staff roles and responsibilities.**

A new, revised draft prepared by CEO Scott Bickford and myself is being reviewed by Ken McKinley and will be discussed by an established subcommittee. It is questionable whether or not this work will be finalized in time for the Annual Town Meeting process.

**4. Sections 906-907 – West Rockport Fire Station.** At the Town Manager’s request the ORC has taken no action on this item while efforts continue to acquire land adjacent to the Fire Station. A zoning amendment may not be necessary.

**5. Section 805.3 – Private Ways.** The Committee reviewed redlined drafts at its meetings of February 11 and 18 and made a number of additional revisions. At its February 25 meeting, it was decided that the ORC would recommend changes to this section: to allow the Code Enforcement Officer to issue a permit for some Private Ways that currently require Planning Board approval; to clarify submission requirements for an application for approval; and to impose a requirement of notice to abutters for Private Ways proposed to serve three or more lots. The proposed changes also would relax some of the performance standards for Private Ways, such as providing a greater maximum slope for a driveway serving only one or two lots.

A clean copy was requested to be voted on at the March 3 meeting and was brought to a vote after deletion of one last redundant subsection. Only three members were present and voting. The proposed amendment was given a positive recommendation to the Select Board.

Motion: John Alexander

Second: Will Gartley, P.E.

Voted: Unanimously in favor.

Rationale: Helpful clarifications bringing CEO and PB responsibilities into better focus and alignment and relaxing some standards.

6. **Section 1003 – Architectural Review.** A Planning Board Workshop was held on March 9, 2016 to address Work Plan items delegated to the PB by the Select Board. There will be no draft language or new recommendations in time for Annual Town Meeting but several strategies have been reviewed and a subcommittee was formed to continue work.
7. **Section 900 – Administrative clean-up, numbering.** Select Board Liaison Ken McKinley and I will report on this ongoing “housekeeping” work at the Select Board meeting scheduled for March 16, 2016.
8. **Section 1103 – Double-sided v. single-sided signs.** Nothing yet. Unlikely to be addressed in time for Annual Town Meeting amendment process this year.
9. **Section 703.3 – ZBA jurisdiction and review of Special Exceptions.** Tabled for the current ORC season.

At its February 18 meeting the ORC assessed the need to cut back on the criteria for ZBA review of applications for Special Exceptions and quickly agreed it is significant. The consensus appeared to be that any proposed changes should clarify at least two things: 1) when ZBA Special Exception approval is required for a related Planning Board application, then the ZBA action should take place first; and 2) the ZBA criteria should be limited to the question of “is X a good location for Y use?”

Terri Mackenzie and Will Gartley observed that the frequency of applications for Special Exceptions has greatly diminished due in part to expanded definitions and relaxed standards for nominally commercial uses in residential zoning districts, such as Home Occupations and Tradesmen’s Shops, as defined.

The existing language was reviewed at the meeting on February 18 and two versions of draft changes were reviewed on February 25. It was decided that further revisions to be reviewed on March 3 should be based on my “from scratch” draft version as opposed to my other draft using the existing language and extensive “track changes.”

It appeared to be the consensus of those present on the 25th that the ORC should weigh this approach against recommending to the Select Board that jurisdiction for Special Exceptions simply be removed from the ZBA and to the PB instead. However, at the meeting of March 3<sup>rd</sup> it appeared more likely that the ORC would table this item until next season, partly for more time to review approaches to the Special Exception problem taken by other municipalities.

10. **Section 500 – Upper-floor overhangs as non-conforming expansions.** Discussed briefly at the March 3 and March 10 meetings. It appeared to be the consensus of those present that the ORC should recommend to the Select Board that the “revocable license” solution be reconsidered.
11. **Sections 300, 803 and 1000 – “Snack Shack” standards and definitions.** Nothing yet. Planning Board Workshop meeting on March 9, 2016 did not reach this issue.
12. **NEW Affordable Housing** – Recommended to the Select Board in principle at both the March 9 Planning Board workshop and the March 10 ORC meeting, although no formal vote has been taken.

During an informal affordable housing “audit” last month with a Penquis development manager a significant violation of the federal Fair Housing Act was discovered in two rows of the Section 917 Land Use Table. “Affordable Housing less than 5-units” and “Affordable Housing 5-units or more” are prohibited in many zoning districts where “Multi-family” is otherwise allowed. FHA regulations and caselaw have established that a local ordinance to that effect has a discriminatory impact and is therefore illegal regardless of intent.

13. **NEW Planning Board Ordinance** – Recommended to the Select Board in principle at both the March 9 Planning Board workshop and the March 10 ORC meeting, however no formal vote has been taken.

As part of routine update of the Planning Board’s bylaws a number of discrepancies were noted between the bylaws and the Planning Board Ordinance, which was last amended a November 2006 Special Town Meeting. With the advice of the Town Attorney a revised set of bylaws is set to be adopted by the Planning Board in April. This would make the 2016 Annual Town Meeting in June a good time to update the Planning Board Ordinance accordingly.

By: 

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