

September 13, 2022

Dear Planning Board Members,

Attorney Collins kindly forwarded to Attorney Siviski her September 12 letter to you outlining the permitting history of our project for the benefit of your new members. We take exception to her characterization of events. What follows is our understanding of what has transpired.

Sincerely,

Boothbay Harbor Waterfront Preservation Board of Directors

### **The Site Plan**

The Waterfront Preservation site plan was approved on October 14, 2020. No appeals were filed within the 30-day appeal window. From November 14, 2020 forward, any appeals should have been limited to permits for specific structures. In fact, on February 23, 2021, prior to commencement of park construction, Waterfront Preservation emailed the Code Enforcement Officer (CEO) to confirm that all local permitting had been obtained. The CEO's response confirmed that remaining local park permit requirements related only to specific structures. No mention was made of anything requiring further Planning Board action.

### **The Site Plan Amendment**

In summer of 2021, an abutter's attorney wrote several letters to the CEO threatening appeals and demanding that park construction be ceased. On August 20, 2021, the CEO advised us that if we did not cease construction and return to the Planning Board for a site plan amendment, he would issue a stop work order. He stated that we had deviated from our approved site plan. The change consisted of adding a handicap access dry zone and granite seating to the splash pad as well as increasing the wet zone from the approved "approximately 25 ft" to 26 ft. The change occurred entirely behind the required 75 ft setback. Notably, the alteration also included **significantly reducing** the footprint of an impervious path within the setback. The net result was a total impervious surface increase from 28.9% to 29.4% reduced from the preexisting 98%. The Planning Board formally found the change to be "minor" and approved it unanimously. The town ordinance states that "minor" changes to site plans merely require a CEO signature, not Planning Board approval. The CEO should have approved the change and saved Waterfront Preservation many months of town board appearances and significant legal expenses. The abutter's appeal of the amendment was eventually denied; however, it was appealed again in Lincoln County Superior Court where it awaits resolution.

### **Letters Alleging Improper Permitting**

On October 12 and 13, 2021 the abutter's attorney again wrote letters to the CEO and the Planning Board. This time, the allegations were of multiple permitting errors including approval of an alleged illegal parking area and an alleged lack of Shoreland Zoning review. Materials acquired under the Maine Freedom of Access Act (FOAA) revealed that, two days later, the former Planning Board Chair sent a detailed email to the CEO dismantling each of the abutter's allegations. In summary, he wrote:

“Conclusion: The preponderance of errors, incorrect assumptions and misinformation in these letters make it difficult to view them as a serious attempt to justify why the BHWP should not proceed.”

### **The Park and Marina Building Permit**

Just 10 days later, in disregard of the Planning Board member’s email, the CEO instructed Waterfront Preservation to return to the Planning Board again for a Park and Marina Building Permit alleging that our 2020 approved site plan lacked Shoreland Zoning review. The former Planning Board Chair’s emailed notes fully contradicted this position. The Planning Board unanimously approved the Park and Marina permit in November, 2021. It was appealed by the abutter.

### **The Appeals Letter**

To our astonishment, on the afternoon of our 1/13/22 appeals hearing, a letter was sent from the DEP to the Board of Appeals indicating that the Planning Board erred in approving the permit. The DEP referred to “materials received” (perhaps written by the abutter’s attorney) stating that the parking area was illegal and that the project required a closer review. Despite the town attorney’s instruction that the letter could not be considered by the Board of Appeals having arrived too late, the abutter’s attorney repeatedly referenced the letter at the Zoom hearing and concluded:

“The Department sent a letter today to confirm that in the Department’s view, which you can reject, the Planning Board erred and they wanted you to have that information before you fulfilled your role as a Board that is charged with determining whether the Planning Board erred.”

The letter could not be “unread” and the Board of Appeals remanded the appeal back to the Planning Board.

Three weeks later on 2/8/2022, Waterfront Preservation representative Mitch Razor emailed a complaint to the commissioner of the DEP. FOAA materials demonstrate that 3 hours after that complaint was sent, the DEP Shoreland Zoning representative emailed the CEO to first learn about what had been permitted by the Planning Board:

"Can you tell me what exactly has been permitted under shoreland zoning for the waterfront park and send me a copy of the plan that was approved locally. I know they had a site plan approval but I am unclear what has been approved locally under the Shoreland zoning standards. Mr. Razor has questioned my findings in the appeals letter that was written that you were looking to add to the appeal.”

It is clear from this email that the DEP Shoreland Zoning representative had weighed in on the appeal of our approved permit recommending “a closer look” at our project without even knowing what had been approved by the Planning Board or why.

Why was the letter from the DEP sent to the Board of Appeals? The email above establishes that the CEO personally requested the eleventh-hour letter be sent. The letter indicated the Planning Board erred in approving our permit which the CEO surely knew would prevent denial of the appeal of a permit he, himself, had issued. The DEP Shoreland Zoning

representative simply complied with the CEO's request. He did not know what the Planning Board had approved until 3 weeks later.

In late June of 2022, 5 months after sending the 1/13/2022 letter to the Appeals Board, the DEP withdrew their objection to the previously approved parking area.

## **Conclusions**

Boothbay Harbor Waterfront Preservation is the only entity in the Planning Board Chair's memory ever required to obtain a general building permit from the Boothbay Harbor Planning Board in addition to a site plan approval. Building permits are the purview of the CEO per town code and they are supposed to relate to specific structures. Our Park and Marina Building Permit is the only building permit ever reviewed by the Planning Board.

The former Planning Board Chair's notes and the record are conclusive. Waterfront Preservation's uses and setbacks were reviewed for Shoreland Zoning compliance prior to site plan approval in 2020. The Park and Marina Building Permit currently under appeal is completely unnecessary and redundant to our approved 2020 site plan.

Just as the DEP acknowledged that our parking area was properly approved, it is time for the town of Boothbay Harbor to acknowledge that, contrary to our abutter's assertions, our site plan was appropriately reviewed for Shoreland Zoning compliance in 2020. Repeated unnecessary and inappropriate referrals by the CEO to the Planning Board prompted by the abutter's attorneys have cost Waterfront Preservation immeasurably in both time and treasure over the past 13 months. The current remand order for a building permit that has nothing to do with structures other than the parking area and the splashpad is inappropriately broad. Waterfront Preservation is now in the unfair position of defending general site plan issues almost 2 years after the window to appeal our site plan expired.

It is incumbent upon the Town of Boothbay Harbor to bring this prejudicial and costly Planning Board/Board of Appeals Park and Marina Building Permit process to an immediate conclusion.