

The meeting of the Bay Head Planning Board was held on Wednesday, August 17, 2011 at 7:30 p.m.

Mr. Shore read the following statement: "Pursuant to the applicable portions of the NJ Public Meetings Act, adequate notice of this meeting was mailed to the Ocean Star and posted in the corridor of this building and filed with the Bay Head Borough Clerk."

Roll Call: Brian Shore, William Furze, David Kellogg, Kathleen Tell, Mayor Curtis, Peter Harrington, Verity Frizzell, Patricia Wojcik, Edward Convey, Kathleen Wintersteen, Fred Applegate

Absent: Bart Petrillo, Jennifer-Barnes Gambert

The July 20, 2011 minutes were approved on a motion by David Kellogg and seconded by Mayor Curtis and passed with all in favor.

Mr. Shore stated the Board had for review Resolution of 666 Lake, LLC - 666 Lake Ave., Bay Head, NJ a/k/a Block 55, Lot 3 which was approved at the meeting of July 20, 2011.

Mr. Shore stated that a condition should be added to the Resolution that there will be no light on top of the building. There will be no light in the lighthouse portion of the bait shop.

Mr. Convey motioned, seconded by Ms. Wojcik that the Resolution with the added condition be approved and passed on a roll call vote as follows:

YEAS: Shore, Wojcik, Convey, Wintersteen, Applegate

NAYS: Harrington

Old Business:

Historic Preservation Ordinance

Mr. Shore introduced Mr. Wayne McCabe of McCabe & Associates, Inc. After several meetings with the Historic Preservation Committee Wayne authored a draft of the ordinance that had been distributed to the Planning Board Members. The goal tonight is to get more input from the Planning Board and comments from the public.

Mr. Shore stated he had already met individually with some of the Council people and he has received input from some other interested parties. There is still a ways to go yet. There is a lot of language that needs to be cleaned up. Some legitimate concerns have been raised about the draft as it stands now. So, Mr. Shore thinks the timeline might be stretched out a little bit longer than we initially anticipated.

Mr. Shore stated there has been some recent discussion about if the ordinance is passed how the historic district and the historic designations of buildings will come about. This ordinance would only act as a vehicle for a commission to make a recommendation what that historic district would be and what buildings would be designated as key or contributing. There would be a public vote on that.

Mr. Shore entertained input from the Planning Board Members.

Mayor Curtis clarified that the Planning Board does not pass an ordinance. They send it on to the Council who either passes or rejects it. Then it goes back to the Planning Board for their review and then a final goes back to Council.

Mr. Shore agreed and stated that three things have to happen. First, it goes through Planning Board then it goes through Council for them to pass. There will be public input at that time as well. Then assuming the ordinance does pass there will be a public vote as to the creation of a historic district.

Mr. Convey stated he could not find the composition of the committee in any of the minutes. Many people have been working on this, maybe we can identify who they are.

Mr. Shore stated that from Council both D'Arcy Green and Mr. Jim Urner represented, from the Planning Board it was himself, Bill Furze, Peter Harrington and from the public we had Mr. King, John Van Schoick and Kate Cutler.

Ms. Wintersteen asked when the committee was formed.

Mr. Shore stated about six months back. The Mayor had come to the Planning Board and requested we examine the possibility of creating an historic ordinance based on some public input. There were some older houses being torn down. There was some fear that Bay Head is losing some of its character. Bay Head raised their concerns to the Mayor and the Mayor in turn raised his concerns him.

Mr. Shore stated to Mr. Convey and Ms. Wintersteen that he will try to get an exact date for them.

Mr. Shore asked the Planning Board members if they have any comments they wish to make.

Mr. Shore stated to Mr. Harrington that the Zakalak study will be used as a tool. There may have been some changes since that time.

Mr. Shore confirmed to Ms. Wintersteen that the study was done back in 2005 and that the homeowners on that list did not have a chance to opt in or opt out. It was just an identification. As part of the ordinance, however, the commission would notify every homeowner that would appear on any list where they were designating historic buildings.

Mr. Kellogg stated that in the draft, page 15, paragraph 9, each of those identified in the past would have to have a nomination by the commission and a hearing for each one of those homes.

Mr. McCabe stated that if more than 51% or greater of the property owners of record say they want the historic district then the district would go forward.

Ms. Wintersteen had a question on the word "historical".

Mr. McCabe said we would look at what the National Register criteria are. Usually it means fifty years or more for the age of a contributing building or in few cases if a building has a very strong historical significance. Other criteria are if a property has archeological

resources, if architecturally significant or if it had a historical association, like where a trade union was formed. It could a whole host of things.

Mr. Shore agreed with Ms. Wintersteen that the definition of “historical” be looked at.

Mr. Shore confirmed for Mr. Convey that a vote to establish a historic district would fail if 51% of property owners within the proposed district, both resident and non-resident, voted their objection.

Mr. Shore stated that in the ordinance there is going to be a demolition delay part of the ordinance. If someone comes to Bart or the zoning official for a permit to perform a tear down to a key or contributing building there are going to be a set of steps the owner would have to go through. The time frame has been debated.

Mr. McCabe confirmed to Ms. Wintersteen the following:

A key building is a structural building that taken individually meets fully the qualifications of being placed on the National Register of Historic Places without any supporting buildings around it. A non-contributing building in the historic district is, for example, a Burger King. It is not over fifty years old and not architecturally significant to the district. Everything else in between is contributing. It does not meet the individual criteria for the National Register by itself but it is reflective of the architectural and development patterns that have taken place in that community and in that particular historic district.

Mr. McCabe confirmed with Mr. Convey that there would be two key contributing building in Bay Head.

Mr. McCabe confirmed to Ms. Tell that if someone wanted to come to the Planning Board for a variance it would first be reviewed by the Historic Preservation Committee. If approved it would go to the Planning Board. It would be set up that the Historic Commission hear the variance request two weeks before the Planning Board would meet. The commission hears it, passes on it and then it would be off to the Planning Board. That’s the way it is under municipal land use law.

Mr. McCabe explained to Ms. Frizzell that the National Registry protects against physical encroachment by federal or state funded projects, e.g. a cell tower or a bank. National Registry designation can be lost but it is rare.

Mr. McCabe confirmed with Mr. Shore the things that would not trigger a homeowner to come before the Historic Preservation Committee: if you want to paint the house, if you want to make a change to the interior of the building, regular maintenance and repair (e.g. repair stairs, repair broken glass, repair the roof). If you are repairing in kind and not changing the architecture of the building these to not go to the commission.

Mr. McCabe confirmed with Ms. Frizzell that the commission can approve materials that can be used in place of the original.

Mr. McCabe confirmed with Ms. Wintersteen that members of the Historic Commission can be a resident or non resident. There is a class A, (history), and a class B (architecture) by which the member would have knowledge of architecture or history. No degree is needed. They would have an interest or the background in it. Class C is the general

membership, the property owners in the town. You have to have more than 50% Class C members by law. All appointments are done by Council.

Mr. Shore stated Mr. McCabe had mentioned that being recognized on the National Historic Register provides some protection against federal and state intrusion. He asked Mr. McCabe if having a Historic Preservation Committee would enhance that.

Mr. McCabe stated, yes. If you do create the commission you could petition the state to be a participant in the Certified Local Government (CLG) program. You then have certain responsibilities to review applications for projects funded either by the state or the federal government in terms of how it will have a historical impact of the community (e.g. widening of roads). You can only become a CLG after your commission has been established.

Mr. McCabe confirmed with Kathleen Tell that yes, by being a CLG participant you definitely have a leg up on the whole process. You have the authority then as a participant to go above them if historic resources are being impacted. They will give you more credence if you are a CLG designation.

Mr. Shore confirmed to Ms. Tell that the draft of the Historic Preservation Ordinance has been sent to Mr. Raffetto for his review. We have not heard back yet. Mr. Shore stated that Mr. Raffetto is a lawyer that specializes in Historic Preservation.

Mr. Convey asked Mr. Shore that on the existing map what would you estimate is the percent of all homes in Bay Head that are on the current map?

Mr. Shore stated that in the map that was developed back in 2005 almost all of Bay Head is in the historic district, about 80%-90%.

Mr. McCabe confirmed to Ms. Tell that if a homeowner is going to demo their home they would have to come in front of the commission. They would need a demo permit. I don't think the building department would give them a permit unless the commission had acted on it. The commission does have the authority to create rules or procedures on how it will conduct permit reviews. The demolition permits would be one of those.

Mr. Shore stated to Ms. Tell that he agrees that a non contributing building should not have to go through those steps.

Mr. McCabe confirmed to Ms. Frizzell that if a contributing structure is in disrepair and unsound, they have to document that before they tear it down. The cost on this is on the homeowner. They would hire a structural engineer to do the documentation. Photos would be taken and architectural drawings of the layout of the home would be completed to show how the home was.

Mr. McCabe stated to Mr. Convey that if there was a denial by the commission there is a due process that has to be given to everybody. You have to have a designated place to make an appeal. That would be Superior Court.

Ms. Frizzell stated this has to be reworked. This is the first thing stated that you have to do.

Ms. Tell stated that the noticing periods are confusing and are burdensome requirements and pretty invasive to people's privacy.

Ms. Tell stated that it is too time consuming and expensive to go to the Superior Court. No one knows Bay Head better than the people who live here. The appeal should go to the Planning Board or to Council.

The wording concerning the appeal process to the Superior Court will be reviewed by Mr. McCabe.

Ms. Tell stated that there is a typo on e. ii., page 20. It refers back to the wrong thing.

Ms. Tell stated that in determining the feasibility of preservation most of the items listed here don't relate to feasibility that relate to the desirability of preservation and it is not to feasibility. It is very expensive to preserve a historical structure. There should be something mentioned that feasibility has something to do with expense.

Mr. Shore stated that there are going to be extra expenses in tearing down a house but again the intent is to try and preserve the character of Bay Head and some of the older buildings in Bay Head. If the goal in people's minds that they want to preserve history and the houses in Bay Head, the look and feel of Bay Head then there has to be some teeth to the ordinance. Without a demolition portion it is an ordinance without teeth.

Mr. Shore stated that maybe there should be separate guidelines for contributing versus non-contributing.

Mr. McCabe stated the commission can look at what type of material is to be used. There may be an alternative material that might replicate the original. A list of materials can be made and materials added as new things come out.

Mr. Shore opened the meeting for public discussion.

Gail Heyer, 224 Bridge Avenue addressed the Board. She was speaking with the past president of the Short Hills Historical District. One of the things he absolutely emphasized was is how their historic district has maintained and improved property values within the district. Also, Ms. Heyer stated that once we lose the streetscape in Bay Head they are gone forever. That has been a critical factor for people to come here and staying here. She has been here for 63 years. She would like to charge the Planning Board to get in a boat and go up the Metedeconk River. She had and was appalled at the housing on the Princeton Ave, side of the Metedeconk which you can't really appreciate from the street. There are some huge houses that look like Ocean Beach. That is not what we want.

Michael Van Sciver, 431 Main Avenue, addressed the Board. He is a real estate agent. As of this meeting, for any future buyers, we are going to have to make full disclosure. This is an action pending. He appreciates the sincerity of what is being proposed. Legally you are on a slippery slope. He stated there are approximately 950 residents in Bay Head. If we are talking 80%-90% that is about 850 homes in the historic district. This will effect every homeowner, currently and in the future. As a realtor being in the business for over thirty years, with full disclosure, it will turn people away. Buyers love Bay Head for the "charm", for the porches and verandas. The Planning Board has done a excellent job in enforcing the rules and regulations of the zoning. He does not think this town needs another layer of government and another cost. Mr. Van Sciver stated you are going to decrease the value of

the property and you are going to limit the number of prospects. In turn, the ratables are going to go down. Mantoloking is going to benefit. Normandy is going to benefit and the other towns that do not have the additional burden. The presentation could be sharper. Make it more simple to understand.

Mr. Shore stated that we are still in draft mode. This is a working session to iron out some of those kinks. Mr. Shore is going to respectively disagree on property values. From what he has read so far property values generally increase in areas that have historic preservation.

Susan Bristol addressed the Board. They own five lots in Bay Head. Ms. Bristol is a licensed architect in the State of New Jersey, a Certified Planner, certified for green design. She is not a specialist in preservation. It is not her primary practice. She has been before many historic preservation boards, before New York City Landmarks which is the most stringent in the country as you know. They live more full time in a village in New Jersey called Rocky Hill which is a historic district. They are celebrating their 30th anniversary of their historic district. She was Chair of her Planning Board which had the role of implementing the historic ordinance. There was a small sub-committee for minor applications. The full Planning Board reviewed the historic preservation plan applications. It was a slightly different structure. They are a smaller town about 300 buildings and 900 citizens to give you some perspective. This absolutely needs to happen here. It is not a scary thing. As for the money, her town is much less affluent than Bay Head. At its least, what the historic ordinance does is it requires people to gain a little knowledge, to do a little bit of homework and to be at least conscious of the decisions they are making about how they are spending their money which actually saves them money. It is really good for the homeowner. We actually went out and got historical preservation professionals to advise the residents if they did not have their own professionals. Building codes should not even be in this discussion. They take care of the structure. If they do not want to contribute to a community then maybe they should buy elsewhere. Ms. Bristol just wants to support entirely what is happening here.

Ms. Bristol stated there should be a summary page of criteria that should be very clear to the applicant. This way they can meet the criteria. Certainly do not rush through this but the time is of the essence.

Ms. Bristol submitted to the board an award winning brochure that guided Rocky Hill through their process.

Nancy Walton, 157 Bridge, addressed the Board. They bought their house twelve years ago. Everybody asked them if they were going to tear it down. That was the mind set. We have lost so many houses. It really is time to keep a level in this town and a level that we are all here for. Ms. Walton supports this 100%.

Duke Habernickel, 537 East, addressed the Board. Their house is no doubt one of those designated houses. They have done a lot to improve their property. He thinks there should not be any restrictions put on property owners. He wished you had a trained expert who sees the downside of this project. He is afraid it is a one sided presentation because he suspects he also sells services to help architectural committees after the plan is instituted. Before a house gets into such horrible condition it should be required to be maintained. If a buyer has to go through all these steps they will have less money to be able to afford to do a nice job of fixing up a home. Is this going to apply to the smaller house also? How about

the Yacht Club, Central Market, Shopper's Wharf and Applegate's Hardware? All of these are historic to our wonderful town. Or is it just going to be my house?

Mr. Shore stated that the ordinance will be applied equally. We do not care about interior applications, pavers or landscapes either. If your neighbor wanted to make some improvements you would want them to be in keeping with perhaps your house, in keeping with the general neighborhood in terms of the look and feel and streetscapes. There is work to be done on the ordinance, but he feels there is a lot of good that will come out of it.

Sharon Shaning, 542 East Avenue, addressed the Board. How are you going to communicate to the town and tax payers what really is going on here? We are a small number here. They need to be heard.

Mr. Shore stated there is going to be one public open meeting that will be advertised. We may have to move it to a larger venue.

Mr. Kellogg stated that there will also be coverage in the newspaper about what is going on. The Ocean Star is here this evening and hopefully there will be story in the next issue to convey to the public what took place here tonight and the direction the committee is trying to go and increase awareness.

Mayor Curtis stated that as Mayor he has told Mr. Shore that he will not take it to council until there are probably two public meetings. One that will cover when everyone is here, whether they are a voting tax payer or non voting tax payer and we will have another one at another time.

Michael Van Sciver asked if it is possible from a parliamentary standpoint to put this on a referendum where all the voting residents could vote.

Mr. Shore stated at the beginning of the meeting that the creation of the ordinance in itself does not create a historic district. The commission that is created from the ordinance will have the opportunity to nominate houses and recommend what the historic district should be. At which point it would be put to a public vote. We are working out the details of what that vote should be. Mr. Shore likes the idea of having a referendum.

Mr. Van Sciver stated he agrees with Mr. Shore.

Ms. Wojcik stated that a very small fraction of our homeowners vote in this town.

Mr. Shore stated that is an excellent point. We may have to look for another vehicle then.

John Beers, 627 Lake Avenue, addressed the Board. He would like to challenge Michael Van Sciver to see if the National Association of Realtors or the New Jersey Association of Realtors has data that suggests when this type of initiative is implemented that prices go down.

Linda Harrington, 512 Club Drive, addressed the Board. This is hard to digest. A power point presentation with key ideas would be helpful to help educate everyone. This is too complicated. There is a lot to absorb. Then people would probably not need to ask some of the questions in the general meetings.

Mr. Shore stated handouts would be given out at the public meetings so we could simplify some of the points.

Mr. Convey agreed with Duke Habernickel that the public meeting should not be presented by an advocate. It should be presented in balance. The presentation should be unbiased.

D'Arcy Rohan-Green addressed the Board. The reason we are here and the reason Mr. McCabe is here is because the Mayor charged this committee with researching the possibility of creating an ordinance that incorporated demolition delay as a component to historic preservation commission. We rely on experts in the field. This is the first roll out of what will become a series of information sessions for the public. This committee is not charged with bringing someone who is adversarial to the process because that is why you are all here. That is why the public is here, to ask questions of concern or who may have issues with this.

Mr. Convey stated that the Municipal Land Use is quantitative. The Historic Preservation Ordinance is qualitative. You come to us and we will tell you if you are able to do it.

Linda Harrington stated that the Planning Board does that now. You give all types of subjective approvals to people that fly in the face of your zoning.

Mr. Convey stated there is no checklist stating you are going to need to do these things. He is not suggesting bringing someone here to shoot it down. What he meant is what's in this document needs to be placed in front of the people that need to know, in a balanced way. The good thing is to preserve the town the way it is. The bad thing is, in his view, some impositions on his rights as a homeowner.

Maria Ritter addressed the Board. She goes back to Mr. Shore's comment of the ordinance having teeth to it. Either we are going to do it or we are not. If we are so worried about every little detail we are going to come out with a camel instead of a racehorse. It has to have teeth in it. Yes, it means we might be stepping on some people's toes but that is the quality of life we all chosen to live in this town for. To her, it is worth it. People come from fifteen miles inland to walk one hour on East Ave. Do we want to lose that? You are taking the teeth out of it.

Mr. Bristol addressed the Board. He stated that automobiles ought to be allowed a little bit of rights on East Avenue. It is very difficult to drive down his street. On a more philosophical note, he thinks people are torn as to whether they want more government or less government. This strikes me as more government. There are already seventy five pages of what you can not do. Go over to the recycling center, no this, no that. There is another seventy five pages of what you an not do there.

Mr. Shore stated that there is good government and bad government. Just like there are good laws and bad laws. We are trying to craft a good ordinance.

Mary Beth King, 500 Main Avenue, addressed the Board. When the draft gets formulated, more details worked out, I would like to suggest some visual photographs that indicate what some of the terminology that we are using this evening would mean to a person that just owns a home. For example, show photographs of maximum building coverage and streetscapes.

Susan Bristol stated that they do not have to be invented by the way. There are a million of documents out there already that give all kinds of design guidelines which are visual aids to existing ordinances in other towns. So you can collect some of those and use those.

Andy Brown addressed the Board. He owns a few pieces of property in town. He is also a contractor and has built a number of homes in the Princeton area and in Hopewell. Both which have rather strong historic ordinances. It has bolstered the quality of the town and the pride the people have for the town. It is onerous but worthwhile. We add to the process to protect all of us. So to him it makes sense.

Mr. King addressed the Board. All he can say is what you people have done here and said tonight is far better than anything he could say. Mr. Shore has done an excellent job.

Mr. Shore closed public comment.

There was a motion made by Mayor Curtis and seconded by Ms. Wintersteen to approve the vouchers with all in favor.

There being no further business the meeting was adjourned.

Respectfully Submitted,

**Laura Tuzzolino
Board Clerk**

