



# HCPC NEWSLETTER

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### HCPC Executive Board Fiscal Year 2015-2016

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## HCPC ANNUAL MEETING RECOGNIZES ACHIEVEMENTS

Regular readers of this newsletter know that we are very good at tooting our own horn. In reality, we only deserve a portion of the credit. Every project is the result of hard work of funding agencies, municipal officials, and volunteers. At our annual meeting, we recognized a few outstanding projects.

These projects have several common traits. **Persistence:** they require long hours in meetings or in the field, taking time away from work and family obligations. **Creativity:** one must maneuver funding and other resources to get what one wants. **Partnerships:** one must create a team and appeal to broad range of interests. **Shared Vision:** one needs a clear sense of where one is going. **Continuity:** projects take years to complete and generally evolve with time.

We made five awards this year:

1. Heritage Award: for projects that promote the protection, conservation, or enrichment of historic, prehistoric, and archaeological resources. Awardee: town of Castine and Castine Historical Society. Over the years Castine has worked creatively to preserve

and enhance its historic character. The Castine Historical Society provided funding for the town to hire HCPC to create an interactive GIS map that allows the user to search for details on historic buildings such as the architectural type, year built, and condition. The town hopes to continue adding data to these maps. For more information see: <http://www.hpcme.org/castine/history/index.html>

2. Visionary Award: for towns that have shown creative persistence in adjusting to a major loss. Awardee: Town of Winter Harbor for its recovery from the closing of a military installation. If we tried to name all the partners in this effort, we would leave someone out. Some fifteen years ago Winter Harbor's downtown was blighted, lacked safe sidewalks, faced serious water and sewer deficiencies, and the police and fire departments were both in overcrowded quarters. Today it has a new public safety building, updated water and sewer systems, and rebuilt streets and sidewalks. Schoodic Arts For All offers a range of cultural programs that highlight and promote local artisans.
3. Regional Collaboration Award: for outstanding examples of volunteers working on a regional project. Awardee: Schoodic Byway Committee. The accomplishments of the Schoodic Scenic Byway Committee could fill pages. It is a text book case of how a group of dedicated and enthusiastic volunteers can marshal support across town lines and from funding agencies. One cannot drive down the byway without noticing the interpretive signs, scenic turn-outs, and new rest areas. The impact of the Schoodic Byway goes far beyond the towns it serves. The entire Downeast area has benefited through increased tourism.

4. Sustainability Award: recognizes examples of adaptation to changing markets and natural resources. 2016 Awardee: town of Stonington. Even though the collapse of ground fisheries has meant that the fishing sector is now concentrated on lobster, the town is still a major fishing port. The town is working on various projects to maintain its fishing industry and diversify its economy. These include a waterfront adaptation plan to protect harbor facilities against sea level rise. It is also making ongoing improvements to its downtown and undertaking cultural initiatives such as events at the Opera House.

5. HCPC Chairman's Award: Dave Milan  
While striving to make Bucksport the center of the known universe, he worked for economic diversification that anticipated the closure of Verso Mill. His efforts gained Bucksport about \$6.8 million in Community Development Block Grants funding infrastructure, job creation, housing improvements, childcare, micro-loans, and business facades. He was also a leader in Bucksport's waterfront revitalization, getting the Penobscot Narrows Bridge Observatory built, and pushing for regional transportation improvements. He has served on the HCPC Executive Board since 2003, Dave Milan has been a great advocate for, and supporter of HCPC, has brought wisdom, and common sense to the table at Board meetings, and above all, he never forgets the **ROPE**.

## **PLANNING NEWS**

*by Tom Martin*

### **An important case on Shoreland Zoning**

The main lesson in this case is to be sure your findings of fact are based on the correct section of your ordinance. Different sections of the

shoreland zoning ordinance govern the relocation of nonconforming structures, and the replacement of such structures. The Planning Board focused on the relocation clause when it should have focused on the replacement clause.

**OSPREY FAMILY TRUST  
v. TOWN OF OWLS  
HEAD et al.**

**NOTE:** This is an abbreviated version of this case, for the full case, see:

[http://www.courts.maine.gov/opinions\\_orders/supreme/lawcourt/2016/16me89os.pdf](http://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2016/16me89os.pdf)

The Osprey Family Trust appealed a Superior Court judgment affirming a decision of the Town of Owls Head Board of Appeals (BOA). The BOA’s decision overruled the decision of the Town’s Planning Board to grant the Trust a permit to remove an existing structure in the shoreland zone and replace it with a new structure that included an addition. The Supreme Court agreed with the lower court’s finding that the Planning Board was required to initially consider the new structure’s compliance with the Town’s Shoreland Zoning Ordinance (SZO) absent the proposed addition. It also concluded that the Planning Board applied the wrong section of the SZO in considering the Trust’s permit application. The Planning Board was ordered to reconsider the application.

**Background**

The Planning Board rendered “the operative decision of the municipality” to be reviewed on appeal because the SZO authorizes the BOA to act only in an appellate capacity, which it did in this case. *See Fitandes v. City of Saco*, 2015 ME 32, ¶ 8, 113 A.3d 1088 4, 2013).

Douglas Johnson, as trustee of the Osprey Family Trust (hereinafter Johnson), filed for

a permit to replace a deckhouse that had been placed on the property in the 1950s and used as a cottage with a new, larger single-family residence. The existing structure is located partly within the SZO’s seventy-five-foot setback zone. In addition to being bounded by the ocean, the rear of Johnson’s property contains a wetland that would require a DEP permit before being used as a building site. Johnson proposed to replace the existing structure with one that would still be located partly within the seventy-five-foot setback zone, but farther back from the ocean than the old structure, along with an addition lying completely outside of the seventy-five-foot setback zone and not encroaching on the wetland.

The Planning Board unanimously approved Johnson’s plan. One of the Planning Board’s findings of fact was that “[u]nder Section 12 of the Town’s SZO, this is a nonconforming structure and it may be relocated, further away from the ocean, but not into the wetland to the rear, to the greatest extent practical in the opinion of the Planning Board. [T]he Planning Board believes the “compromise” location of the proposed new building—15’ back from its original proposed location . . . —best meets the applicable SZO standard, i.e., the proper balancing of the competing environmental interests.

The referenced SZO provision states, in part, that “[a] nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements *to the greatest practical extent as determined by the Planning Board.*”

Delaney, an Owls Head resident, appealed the Planning Board’s decision to the BOA, contending that the Planning Board erred in

finding that Johnson’s project conformed with setback requirements “to the greatest practical extent.” The BOA agreed and concluded that the decision was clearly contrary to the Shoreland Zoning Ordinance.”

Johnson appealed to the Superior Court, which affirmed the BOA’s decision. It concluded that it was within the Planning Board’s discretion to consider the location of the wetland in deciding that it was not practical to require that the building be relocated into the wetland. However, it was not reasonable for the Planning Board to consider the proposed addition before determining whether the relocation of the existing structure “conforms to all setback requirement[s] to the greatest practical extent.”

The proper analysis would have been to first consider how the existing structure could be relocated on the property to conform, and to then consider whether an addition outside of the 75-foot setback area could be constructed. The evidence compels a finding that the existing structure could be relocated further from the ocean without encroaching on the wetland if not for the proposed addition. The Superior Court overturned the Planning Board’s decision. The case was appealed to the Supreme Court.

### **Supreme Court Discussion**

The court reviewed the Planning Board’s approval of the permit “for error of law, abuse of discretion or findings not supported by substantial evidence. It interpreted Owls Head’s ordinances de novo. *Gensheimer v. Town of Phippsburg*, 2005 ME 22, ¶ 16, 868 A.2d 161. The court reviewed “factual findings of the Planning Board with deference and may not substitute our own judgment for that of the Board.” The Board’s decision is not wrong because the record is inconsistent or a different conclusion could be drawn from it. . . . We are bound to uphold

the Board’s decision unless the evidence before the Board would compel a positive finding for [the appellees].

*Gensheimer*, 2005 ME 22, ¶¶ 17-18, 868 A.2d 161

In its findings of fact, the Planning Board determined that relocating the proposed structure fifteen feet farther back from the ocean to a site that did not intrude on the wetland struck a proper balance between Johnson’s interests and those of the SZO—that is, the relocation conformed to setback requirements not to the greatest theoretical extent, but rather “to the greatest practical extent.” That conclusion represents a mixed question of fact and law. The real question presented is whether the Planning Board was entitled to make its determination based on the project as proposed by Johnson, which included an addition to the original structure’s footprint, or whether, as the Superior Court concluded, the Planning Board was required to consider how the original structure’s footprint could be relocated before considering the proposed addition. We conclude that the Planning Board erred in its interpretation of the Ordinance.

Different sections of the SZO govern the *relocation* of nonconforming structures, and the *replacement* of such structures. The Planning Board focused on the relocation provision. It is clear, however, that Johnson was not seeking to relocate the deckhouse, but rather to demolish it and replace it with a new structure, plus an addition. When a nonconforming structure is replaced, as opposed to being relocated, then section 12(C)(3) of the SZO is applicable:

Any non-conforming structure which is located less than the required setback from a water

body . . . and which is removed . . . may be reconstructed or replaced provided that a permit is obtained within one year of the date of . . . removal, and provided that such . . . replacement is in compliance with the water setback requirement to the greatest practical extent as determined by the Planning Board.

Although the Superior Court conclusion that the Planning Board erred in considering the footprint of the original structure and the new addition as a single whole—was reached after consideration of section 12(C)(2), the court’s reasoning is equally applicable to section 12(C)(3). Instead, the court simply denied Johnson’s appeal from the BOA’s decision, which was also made after incorrectly considering section 12(C)(2). For that reason, we vacate the court’s judgment and remand the matter with instructions to remand Johnson’s permit application to the Owls Head Planning Board for de novo consideration and application of the applicable section of the Shoreland Zoning Ordinance.

## **JOINT PURCHASING NEWS**

The Road Salt Joint Purchase bid is underway. We have 30 towns participating this year ordering over 13,500 tons. We hope to have bid results to towns by August 15<sup>th</sup>.

## **CDBG NEWS**

*by Tom Martin*

The Community Development Block Grant (CDBG) program continues to be an important source of funding for public infrastructure, economic development, and housing improvements. The Maine Office of Community Development (the agency that administers the program) staff reports that no significant changes are planned for the 2017

grant competition. Most likely the grant categories and application requirements will be similar to those of 2016. For an overview of the grant requirements, see: <http://www.maine.gov/decd/meocd/index.shtml> Feel free to contact Tom Martin for more information.

If you are thinking of applying for CDBG funds in 2017, we urge you start preparing now. We are available to meet with towns, explain the household income requirements, suggest potential matching sources of funds, and discuss the steps necessary to submit a competitive application. Remember that an application must show strong citizen support. The sooner you start holding public outreach meetings and spread the word about your project, the better your chances of receiving a good score.

## **BROWNFIELDS NEWS**

*by Tom Martin*

HCPC has received another three-year US EPA (Environmental Protection Agency) Brownfields Assessment grant. We use these funds to hire an environmental consultant to conduct environmental site assessments (ESA’s) and site clean-up plans. The program helps landowners identify the extent of contamination on a property.

### **Brownfields Assessments Are a Good Investment**

On a national level, EPA Administrator Gina McCarthy said that “for every public dollar spent through the program over its life, a remarkable average of \$17.79 of private capital has been leveraged. It’s all about providing that initial funding, and sparking that first conversation to set stalled sites on a path toward smart, safe redevelopment that directly benefits communities.”

We are finding similar results through our work in Hancock County. Here are a few

examples of the return on investment from brownfields site investigations:

1. Corea (Gouldsboro): The abandoned Navy property is now a potential aquaculture site. Without the environmental assessment that identified the extent of contamination and suggested remedial measures, it is doubtful that the aquaculture operation would have received financing from most lending institutions.
2. Ellsworth: Remediation costs for one property were estimated at \$20,000. This site is now available for commercial reuse.
3. Stonington: An initial site assessment evaluated a waterfront property to determine that only a few potential environmental issues existed. The property was recently sold for \$150,000 and is undergoing major renovations.
4. Sullivan, Country Store: The new owners invested \$125,000 and hired two employees. They also received \$50,000 in State Cleanup Funding. The property was then sold for \$160,000.
5. Sullivan, Gordons Wharf: After completion of the ESA, \$400,000 of public and private funding was invested to purchase and redevelop the property. It is now an important access point to Taunton Bay. It currently houses two environmental non-profit groups, Maine Coast Heritage Trust, and Friends of Taunton Bay.

6. Surry: After a brownfields site investigation, a welding operation was able to invest \$265,000 in improvements and hire 2 new employees.
7. Winter Harbor Schoodic Marine Center: the center opened after the brownfields site investigations identified actions necessary to address contamination (see related article under the Transportation section of this newsletter). The facility will function as a marina and also connect ferry and bus services. It hosts exhibition space. Long-term plans include hosting educational and research activities.
8. Winter Harbor School property: the school site is now a \$1.7-million town office and public safety building.

### **Do You Know of Any Sites that May Qualify for Brownfields Assessment Funding?**

Please contact Tom Martin with any questions. See also:

<http://www.hcpcme.org/environment/brownfields/index.html> for information on site qualifications and priorities for site selection.



### **A Poetic View of Brownfields<sup>1</sup> (With Apologies to Emma Lazarus):**

Give us your tired buildings, your poor underutilized sites yearning for reuse. Your huddled chassis and other junk threatening to pollute our teeming shores. The wretched refuse from

abandoned commercial and industrial operations. Send information on these sites to us, and we will lift our lamp to see if they qualify for brownfields funding.

<sup>1</sup>**Note:** this piece was inspired by a recent posting on [www.brownfieldslistings.com](http://www.brownfieldslistings.com)

## **SOLID WASTE NEWS**

The 2016 Ellsworth Area Household Hazardous Waste and Universal Waste collection is scheduled for August 20th from 9:00 AM to 1:00 PM at Ellsworth High School.

The collection is open to all residents. Residents from participating towns are able to dispose of their items household hazardous waste items at no charge. You must obtain a permit from your town office in order to dispose of your items at no charge. If you are a resident from a non-participating town there is a charge for disposal. The rate is \$26 for each unit. A unit is 5 gallons.

Universal waste will also be collected at this event. Universal waste consists of TV, computers and monitors, assorted electronic equipment, items containing mercury and fluorescent light bulbs.

Universal waste items are charged for each particular items. The prices vary.

It is not too late for your community to participate. For more information, please contact Sheri Walsh at [swalsh@hcpcme.org](mailto:swalsh@hcpcme.org) or 667-7131.

## **RECYCLING BINS**

HCPC is now offering curbside recycling bins for sale. They are \$9 each. You may stop by our office Monday-Friday 8 AM to 4:30 PM.

Capacity is 18 gallons and it is made from



recycled materials.

## **Compost Bins**

HCPC is now offering compost bins for sale. They are \$48 each. You may stop by our office Monday-Friday 8 AM to 4:30 PM.



# **TRANSPORTATION** **NEWS**

*by Jennifer Boothroyd*

## **SUMMERTIME AND THE TRAFFIC IS HEAVY**

You have probably already discovered that MaineDOT is in the midst of several road projects in Hancock County. Please remember to be aware of workers and hazards, and that delays may occur during peak hours, so plan accordingly. This might be the time to look at alternatives.

### **There Are More Ways to Get Out of Your Car.**

#### **Two By Land:**

#### **1.Schoodic Outdoors Project Promotes Hiking and Biking**

This summer, the Schoodic National Scenic Byway is kicking off its Schoodic Outdoors initiative. Schoodic Outdoors (formerly Ped, Pedal, Paddle) encourages Byway visitors and residents to park their cars and enjoy an outdoor adventure in the Schoodic Area. A brochure is being developed with maps and information about trails for hiking and biking, as well as waterfront access sites for hand-launching boats. There are also plans to revamp the Schoodic Byway website with a Schoodic Outdoors page.

#### **The Down East Sunrise Trail Is Expanding**

The Down East Sunrise Trail is being expanded into Ellsworth! The contract for completing the 2-mile stretch of trail from Washington Junction to Route 1 in Ellsworth was awarded

to Lane Construction in the spring, and work is currently underway. Unlike most of the trail, this portion will be constructed alongside the existing rail line that is used by the Downeast Scenic Railroad. The portion of the trail is expected to be completed in September, creating more than 80 miles of trail linking Ellsworth and Machias for car-free recreational enjoyment.

#### **At Least One By Sea**

The former Winter Harbor Marina is now home to the Schoodic Marine Center. The site will house museum exhibits and serve as a transportation hub, maintaining the docking facility for regional ferry service between Bar Harbor and Winter Harbor. Two ferries will be utilizing the facility; Downeast Windjammer Cruises, also docking at the Bar Harbor Inn, and Frenchman Bay Research Boating, docking also at the College of the Atlantic. In addition, the facility will serve as a bus stop for the Island Explorer bus system, traveling around Acadia National Park, and will be home to Seascape Kayak and Bike, offering rentals to those who prefer to experience the Schoodic area from outside a vehicle.

#### **Bicycle-Pedestrian Planning in Winter Harbor**

Hancock County Planning Commission recently prepared a bicycle/pedestrian plan for the village area of Winter Harbor. The plan can be viewed on the Winter Harbor page of our website. The Town of Winter Harbor and Maine DOT are also working together to design and create a bicycle-pedestrian hub for the village. Located adjacent to the town office, the hub will have benches, bike racks, and landscaping, and will include an informational kiosk with a map showing routes and destinations, parking, and public restrooms.

## **Bike Maine Event Scheduled for September**

The Bicycle Coalition of Maine's big annual event, BikeMaine 2016, is heading our way this September. The route will take 400 bikers through Hancock and Washington Counties over the course of a week. This exciting opportunity is bringing visitors to see our beautiful corner of the state, so make them feel welcome and encourage them to return! Keep the event in mind as you travel in Eastern Hancock and Washington Counties September 10-17, and be careful and courteous to bicyclists. For information about the event and route, visit the BikeMaine 2016 website at [www.ride.bikemaine.org](http://www.ride.bikemaine.org).

## **Facts and Figures on Hancock County**

Did you know:

- NOAA reported that in 2014 Stonington was the 18th largest fishing port in the US by value of landings at \$60 million dollars. This was more than Gloucester, Mass, Ketchikan, Alaska and Seattle, Washington.
- Hancock County's year-round population is projected to decrease from 54,418 in 2010 to 50,562 in 2032.
- About one-third (13,134 units) of the 40,184 dwelling units in Hancock County in 2010 were seasonally occupied.

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**Hancock County Planning Commission is a partner with local and county government to: protect our heritage and resources, plan for the future and promote a sound economy for the people of Hancock County.**

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