Chairman James Henderson called the meeting to order at 6:35pm at the Harpswell Community TV Studio, and led in the Pledge of Allegiance. Henderson introduced the Board members present: Howard Nannen, Linda Toothaker, and Don Rogers. Planners Tony Dater and Jeremy Hatch, and Planning Assistant Debora Levensailor were also present. The meeting was broadcast live on Harpswell Community TV, and taped. The agenda for the meeting was published in "The Times Record" on November 14, 2001. Henderson thanked the Harpswell Community TV staff for broadcasting and taping the meeting. He also reviewed the agenda and the other issues the Board would consider this evening.

Minutes of October 17, 2001 – Nannen asked to have the words rational (page three) and rationalization (page 3) changed to rationale. Henderson stated, "I move that we approve the minutes of October 17th, with corrections." Rogers seconded. **Carried, 4-0.**

The Board discussed the **Theberge Reconstruction of a Non-Conforming Structure, Tax Map 27-41**, which they had previously approved on September 19, 2001. It has been brought to the Board's attention that Theberge had completely demolished the old shed which was to have been included as part of the reconstruction. Henderson asked Hatch if he knew anything about the issue. Hatch said that when Theberge had begun to move the shed, he had discovered that it was rotten, and could not be moved, so he had torn it down. Nannen said many of the Board members had thought it would have been better to build a new structure rather than to reconstruct the old one, but since it was an historic structure, the Board had approved the reconstruction. Nannen is concerned that the old structure has been lost, without an opportunity for the Board to comment on the issue. He said the new structure should not be built in a larger footprint than the one the Board had approved on September 19th. Dater suggested that the historical requirements be included in the ordinances in the future. Henderson wanted it noted for the record, that the Planning Board has been concerned about abiding by the ordinances, and the Town Office staff should take the attitude of the Board into account when giving advice. Registration with the Cumberland County Registry of Deeds is to be considered before any permits (regarding Planning Board issues) are issued by the Codes Enforcement Officer.

Tom and Marianne Parciak, Reconstruction of Non-Conforming Structure, Commercial Fisheries I, Tax Map 23-75, Steamboat Rd., Bailey Island (return from 09-19-01 meeting) - The Board has received a letter from Douglas Richmond, architect and representative for the Parciaks, dated November 13, 2001, in which the Parciaks have asked the Board to table their application to the Board's December 19th meeting. The Board reviewed their by-laws, Article VI, Section 4c, which states, "The expiration date on all applications will be 100 days from the first hearing. No extensions will be given unless a delay is caused by governmental agencies." Planner Hatch and Planning Assistant Levensailor told the Board that the Parciaks and Mr. Richmond have been informed of the 100 day deadline. Nannen stated, "I move that we table the Parciak application to our December 19th meeting with the understanding that it would be difficult to enforce the one hundred days since the by-law is new, and the application was before us before the passing of the by-laws." Rogers seconded. **Carried, 4-0.**

Bowie Home Construction, Subdivision Review, Interior, Tax Map 11-51, Allen Point Road, Harpswell (return from 10-17-01 meeting) – Doug Johnson, of Brian Smith Surveying, Inc., representative for Bowie Home Construction, presented the application. The Board and Johnson reviewed the Board's requested requirements noted in Planner Hatch's November 19, 2001 memo: (1) Johnson said the Shoreland Zone is now on the revised site plan; (2) The 75' setbacks from the wetlands (and the 25' wetlands setback on lot #4) are on the revised site plan; (3) Henderson asked Hatch if there had been a Maine Department of Inland Fisheries and Wildlife (MIFW) rating of the habitat in the proposed subdivision wetlands. Hatch said that, as of yet, he had not received the full data on the habitat rating from them. Johnson said the Comprehensive Plan does not show any sensitive areas in the proposed subdivision area.

The Board reviewed the Subdivision Ordinance, Sections 9.10 (Impact on Wetlands) and 9.14 (Aesthetic, Cultural, and Natural Values). Nannen read Section 9.14.1 which states, "All subdivision plans must conform with the wildlife management guidelines developed by the Maine Department of Inland Fisheries and Wildlife (MIFW) for the protection of significant wildlife habitat…" Nannen said the ordinance refers to waterfowl habitat, and that the two sections of the ordinance relate to the proposed subdivision issue. Johnson said those areas are usually zoned as resource protection. Nannen said there are places in Harpswell which are not mapped as resource protection, and the Board has had difficulties arise because they have not all been mapped.

Henderson allowed Selectman George Swallow to speak and he stated, "When I was doing research, the IF and W maps were showing only coastal wetland, not interior wetland ratings." Hatch said that IF & W has put it together at the State level, that the Town has some data, but not enough to put it together into a map. Nannen said it doesn't mean there isn't any significant habitat in this area, just that the Board doesn't have enough information from IF & W. Hatch said the area shows up as a stream on the National Wetlands Inventory, and that IF & W possibly doesn't look at this because it is not classified as a wetland on the National Wetlands Survey. Hatch also said that Woodlots Alternatives, Inc. has rated the area as Tier I (insignificant). He read a portion of the May 29, 2001 Woodlot Alternatives, Inc. letter which states, "Generally speaking, projects that are not directly in a wetland, or projects that alter less than 4,300 square feet (about 1/10 of an acre) of a wetland not located within a shoreland zone or a *Wetland of Special Significance*, are exempt from permitting requirements…The proposed access road crosses the stream located within the property. This will likely qualify for an NRPA Permit-By-Rule providing all the standards as outlined in Chapter 305 are adhered to." Rogers said that he had visited the site, had gone upstream, and had not seen any real bogs or ponds, just wet spots.

The Board continued to review Hatch's memo: (4) The 50' tick marks for 911 are on the revised site plan; (5) Henderson requested revision numbers on the plans, and Johnson said they would do so; (6) The traffic survey from Acorn Engineering, dated November 8, 2001 is now in the file; (7) The water and well study from Wright Pierce is now in the file; (8) Regarding DEP/slopes requirements, the Board reviewed Woodard and Curran's November 19, 2001 letter, specifically the section referring to steep slopes which states, "Roadway slopes at the location of the 48-inch culverts appear to be at slopes of 1:1 or steeper. This conflicts with Item 6 of the E&S Plan, which states that no slopes shall be steeper than 2:1 (two feet horizontal for every one vertical foot)." Johnson said that he does not agree with Woodard and Curran, that the worst slope is 1.5:1, not 1:1. Hatch said, according to the Town Road Ordinance, Section 4.2.6, the side slopes are to be no steeper than 3:1, and that Section 9.15.3 of the Subdivision Ordinance refers back to the Town Road Ordinance. Henderson asked Hatch to summarize the Woodard and Curran conclusions for the Board. Hatch said **Bowie Home Construction's Storm water Study is not complete for the subdivision area (other than the road area)**; the bare earth issue/mulch issue is resolved, **twelve other stone check dams were not installed and are needed** (Clayton Bowie said he would install them.); and the **road is washing out under the riprap on the sides of the road** (Johnson said they would fix the washed out section of the road.) **Henderson said there are some issue to resolve** and that after the issues had been resolved, the Board should receive another letter from Randy Tome, Woodard & Curran Project Manager, concerning the applicant's compliance with the requirements.

The Board continued to review Hatch's November 19th memo: (9) FEMA's 100 year flood plain is included in the applicant's drawings; (10) The total acreage is on the revised site plan, under the notes section; (11) The Harpswell Historical Society letter is now in the file; (12) The financial capacity letter is now in the file; (13) The fee for consulting services has been paid; (14) The Wright Pierce water and well study is in the file; and (15) The requested word change from "final" to "preliminary" has been done on the revised site plan.

Henderson referenced Hatch's November 14, 2001 memo regarding the proposed subdivision road issues. Henderson stated, "The ordinance (the Town Road Ordinance) seems to make a way in a subdivision a road. What argument is there that it isn't a road?" The Board, Hatch, and Johnson read, reviewed, and discussed the Town Road Ordinance private road (Section 3.3), local road (Section 3.6), and common drive (Section 3.7) definitions. Hatch said that a private road is not solely a common drive. Clayton Bowie wanted to know why there is a common road definition in the first place, if it is not to be used. Rogers stated, "If you're not a subdivision yet, I can see how you can get by with a sixteen foot road. But, now, (as a subdivision) it should be a twenty-four foot road." Selectman Swallow stated, "Private road and public road definitions are in the State statutes. A common drive is a road that doesn't need to meet as stringent standards…The Planning Board would determine if that road should meet the stringent standards. Any road the Planning Board looks at, if you determine that it should be a local road, and it meets the stringent requirements, you can do that."

Nannen asked Johnson if he thought the authors of the ordinance said a common drive is the only type of road that should be in a subdivision. Johnson said he did not. Nannen read Section 9.15.3.1 (Road Design and Construction Standards) of the Subdivision Ordinance. He said that if Johnson could provide the Board with convincing evidence, he would be comfortable with the Board not being held to a box of a twenty-four foot road. Johnson stated, "It's a subjective determination. I have a report from Brunswick, which has a progressive, long-standing

planning department. They have a nine lot subdivision with a fifteen foot gravel road with no shoulders. It's been approved by about nine departments."

Hatch stated, "In a discussion with legal counsel, Sally Daggett, and Doug Webster (former Town Codes Enforcement Officer), both agreed that a subdivision road is a local road. The Planning Board can provide a waiver. Sally Daggett says unless you have clear and convincing evidence, that the area over the stream has minimized erosion, etc., she strongly recommends that the Planning Board not grant a waiver…The Planning Board needs to stay with the fact that it's a local road, but could grant a waiver over the culverts…In one sense we're getting a road that is conforming to local standards, and in other cases, it's overbuilt." Selectman Swallow said he did not think a sixteen foot wide road is a problem. He said however, with the ten foot drop off near the stream, and no guard rails, there could be problems, especially in the winter when it will be icy, and someone could go off the embankment. Toothaker stated, "We all have these concerns." Rogers said he thought the road was fine except for the stream crossing. Nannen said he was convinced that it was a local road, and that according to the Subdivision Ordinance, Section 9.15.3.1, the Board could reduce the standard, but that **they should see some recommendations for the resolution of safety concerns.** Johnson presented the Board with pictures of the Brunswick subdivision he had referenced earlier in the meeting. Henderson stated, "Others may do that for their reasons. I can't be convinced that because someone else did it, we should approve it."

Clayton Bowie said the proposed subdivision road is only one, to one and a half feet narrower than the Allen Point Road, that he was trying to fit the road in with the others in Town, and that the smaller the road is, the less impact it will have. He said the road is pretty much a straight shot going in. Johnson stated, "That size road is adequate." Bowie stated, "What you see is what you get. There's no future development." Dater asked Bowie and Johnson if they thought the requirement was a twenty-four foot traveled way, and they said they did. Hatch said the shoulders of the road are measured from the edge of the traveled way to the bottom of the ditch. He said the requirement would be a total of twenty-four, only adding approximately two feet to the road that Bowie has already constructed. Bowie said he would add the required two feet. Johnson said Bowie would lower the road at the dip, fix the slopes, widen the traveled way, and put guard rails in where the contractor indicated they should be placed. Henderson, Dater, and Hatch all recommended a requirement of an eighteen foot traveled way.

Johnson said that widening the traveled way to eighteen feet would cost a lot of money, and would not be in keeping with the character of the community as described in the Comprehensive Plan. Selectman Swallow suggested that the Board obtain the fire chief's opinion as to the preferred width of the traveled way. Hatch said the road should minimize the impact on the abutters and protect natural areas. Nannen said he thought Johnson had a high probability of convincing the Board that a sixteen foot right of way is acceptable. Henderson disagreed with Nannen, saying, "The argument is saying that eighteen feet is not necessary." Henderson asked Johnson to present the Board with a design that included an eighteen foot traveled way. Bowie and Johnson asked that the Board decide on the required width of the traveled way this evening. **Toothaker and Rogers again insisted that guard rails were necessary**. After additional discussion, the Board agreed to vote on the issue. Nannen stated, "I move that the applicants have presented clear and convincing evidence that the alternative design of a sixteen foot traveled way, except in the area of the stream crossing, is necessary to preserve community character, and the resulting design will not create safety or long-term maintenance problems for the Town." Rogers seconded. **Carried, 3-1 (Henderson – No).** Toothaker stated, "I move that we table this application to our next meeting." Nannen seconded. **Carried, 4-0.**

Other Business the Board May Wish to Consider – The Board reviewed Planning Assistant Debora Levensailor's November 14, 2001 memo in which she suggests that the Board consider two possible amendments to their recently adopted by-laws. The Board also discussed an effective date for the by-laws. Nannen stated, "I move that the Board make the adopted Planning Board by-laws effective November 28, 2001, and further table the proposed amendments for action at the next Board meeting. And, this action on the current, adopted by-laws will not affect any pending applications." Rogers seconded. **Carried, 4-0.**

Henderson asked Planner Hatch to present his request for the Board to extend the filing deadline for all current site plans at the Cumberland County Registry of Deeds to April 1, 2002, and to allow applicants to file new site plans in the Town Office, so that permits may be issued in an efficient manner. Hatch cited the Site Plan Ordinance Section 13.3.2 which states, "If the application is approved, one copy of the approved site plan with the Notice of Decision must be recorded by the applicant in the Cumberland County Registry of Deeds within forty-five (45) days of

approval and the book and page number provided by the applicant to the Code Enforcement Office. Prior to the expiration of the 45 days, the Planning Board may extend this period for cause." Hatch informed the Board that the Registry of Deeds requires that the applicant submit a site plan which contains the embossed seal of an architect, professional engineer, or registered land surveyor. He said many applicants who are constructing simple projects, such as fishing shacks, usually do not hire a professional architect, engineer, or registered land surveyor, due to high costs. He said the ordinance is in the process of being rewritten to better accommodate the applicants.

After discussion by the Board, Nannen stated, "I move that the Planning Board extends the period required for the filing of Notices of Decisions and Site Plans at the Registry of Deeds until April 1, 2002, including Site Plans approved by the Planning Board since the Town Meeting on March 11, 2001, Site Plans pending before the Planning Board, and Site Plans that may come before the Board before the Town Meeting of March 2002. And, that all Notices of Decisions and Site Plans approved between now and then be filed at the Harpswell Town Office in the Planning Office." Henderson seconded. **Carried, 4-0.** Henderson asked to have the following noted for the record: The Board and the Chair have received an e-mail memo from Planning Assistant Debora Levensailor stating that the Town would like to have an extension of the filing date because the ordinance places an undue burden on the applicants to file site plans at the Cumberland County Registry of Deeds, due to the requirement of an embossed seal of an architect, professional engineer, or registered land surveyor. The Town plans to propose a revision to the ordinance to eliminate the hardship. The Board finds that this situation, and the Town's intent to change the ordinance, is sufficient cause for this extension. The Board's vote extending the date for registration with the Cumberland County Registry of Deeds did not alter the ordinance requirement that permits regarding these Planning Board cases be issued only after filing with the Registry. The Board cannot amend ordinances.

Rogers motioned to adjourn. Toothaker seconded. **Carried, 4-0.** The meeting adjourned at 9:50pm.

Debora A. Levensailor, Harpswell Planning Assistant