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**CAMDEN PLANNING BOARD**  
**MINUTES OF MEETING**  
**August 15, 2013**

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**PRESENT:** Acting Chair Lowrie Sargent; Members Richard Householder, Jan MacKinnon, and John Scholz; Alternate Member Kim Tuttle; Don White, Select Board Liaison; Town Attorney Bill Kelly; and CEO Steve Wilson

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**ABSENT:** Chair Chris MacLean and Alternate Member Richard Bernhard

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The meeting of the Planning Board was convened at 5:00 pm.

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**1. Public Input on Non-agenda Items:**

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Sid Lindsley: Mr. Lindsley came forward to speak about a Release Deed from Daniel and Joann Passeri to the Town of Camden that had been accepted by the Select Board at their last meeting. This is in regard to a piece of land surrounding Bay Road, and he believes it is yet another attack on the public rights-of-way to the harbor in Camden. This parcel is adjacent to another strip of land given to the Town by Beulah Baldwin as a “highway” to the harbor. This deed, however, sets certain conditions such as prohibiting structures, walkways and steps. Mr. Lindsley is grateful that Ms. Baldwin gave the property she did, and he is before the Planning Board because they have jurisdiction up to the high-water mark of the harbor. He wants them to pay attention to what is happening to these rights-of-way; if they are not protected the Select Board will simply give them all away.

Mr. Lindsley noted that there is still a right-of-way on Sherman’s Point that remains partially blocked by trees that were supposed to have been removed long ago. He added that Mr. Kelly will be speaking to how this issue is on its way to being resolved, but it isn’t right that these things keep happening in the first place. He hopes the Board will consider how to protect the public’s access to the harbor; he believes it is within their jurisdiction to do so.

**2. Minutes:**

August 1, 2013: There were many changes made to these minutes and the Final version contains all corrections.

**MOTION by Mr. Householder seconded by Ms. MacKinnon** that the Minutes of the Camden Planning Board of August 1, 2013, as amended, be accepted.

**VOTE: 5-0-0**

**3. Request for a Zoning Ordinance Amendment to the Coastal Residential District:**

The Acting Chair informed those in attendance of the process involved in amending the Zoning Ordinance after a request comes forward:

At the very beginning of this process, the Board holds a series of discussions with the Applicant so they can better understand the concept and work with the Applicant on developing the proposed language. Next, a Public Information Gathering meeting is held to receive public comment. Depending on the level of interest, the Board may hold a second PIGM. The proposal

1 then goes to two formal Public Hearings where the public is also given the opportunity to  
2 comment, and eventually goes to a vote of the Board. This vote is only a recommendation  
3 regarding whether or not the amendment should go to the Select Board for their consideration.  
4 After holding Public Hearing(s) on the amendment, the Select Board decides whether or not it  
5 should be put on the ballot (for either June or November) because every zoning amendment must  
6 go to a vote of the Town. If they don't want to wait for the regular ballot, every Applicant has the  
7 right to ask the Select Board to hold a special Town Meeting; the Planning Board has no say in  
8 this decision, it is purely a Select Board issue.

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10 This is the Planning Board's third meeting on this topic, and the process involving Fox  
11 Hill is really just getting started. This evening's meeting is a Board discussion on the language  
12 of the proposal that will involve the Applicant's representative, Paul Gibbons, and the Town's  
13 Attorney, Bill Kelly, and the goal is to develop the language of the proposal. Noting that there  
14 would not be an opportunity this evening for public comment, Mr. Sargent added that the next  
15 opportunity for public comment will be the Public Information Gathering Meeting scheduled for  
16 the Board's next meeting on August 29. The Board wants to make sure that neighbors of the  
17 property who might be summer residents have the opportunity to speak before they return home.

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19 *Applicant's Presentation:*

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21 Paul Gibbons: Mr. Gibbons informed the Board that in revising the language of the proposed  
22 draft amendment he addressed concerns raised at the previous meeting regarding increases in  
23 traffic and in the use of the property in general; he also added a provision regarding the approval  
24 of a replacement operator that includes standards that a replacement must meet; and, he  
25 addressed concerns regarding future changes in patient treatment. He wanted to put these  
26 provisions within the Ordinance to assure neighbors that the facility will stay the way it is  
27 intended to stay.

28  
29 Mr. Gibbons went over his memo to the Board dated August 15, 2013, and the changes  
30 he had made to the proposal:

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- 33 1. There is no change in the proposed patient load requirements.
  - 34 2. There is a new provision that the parcel of land where these facilities will be housed  
35 must exist as a single lot of record at the time the Ordinance is passed.
  - 36 3. The proposed delivery schedule remains the same.
  - 37 4. Proposed building setbacks remain the same.
  - 38 5. Accessory structure setbacks remain the same.
  - 39 6. The protections for retaining residential character remain the same.
  - 40 7. The prohibition against out-patient services or clinics remains, but to further address  
41 concerns that the facility could turn into a Methadone Clinic, for example, two new  
42 definitions have been created - "Residential" and "Outpatient Services".

43 Items 8 – 15 are new and are intended to serve as minimum performance standards which  
44 Operators must meet:

- 1 8. To ensure that the Operator has previously met stringent performance and financial  
2 standards, there is a requirement that the Operator show proof that they are accredited  
3 by a hospital accreditation agency – the Joint Commission of Hospital Accreditation.
- 4 9. The Operator must have a five-year history of successfully operating a similar  
5 facility.
- 6 10. To ensure that patients are screened, clients must be evaluated regarding their needs  
7 and the clinic’s ability to serve them appropriately.
- 8 11. A signed contract will be required to signify that all patients are voluntarily  
9 committed to treatment.
- 10 12. No patients can be accepted who have a Court-ordered mandate for treatment. This  
11 provision helps address concerns that an aggressive press contingent could be  
12 following a high-profile patient whose alcohol-related escapades, and appearance in  
13 court, have generated a great deal of public interest. It also works to ensure that the  
14 privacy of all patients is protected, which helps in the recovery process.
- 15 13. Only residential services are allowed; and a new definition contains the standards that  
16 must be met to qualify as a “Residential Treatment Facility”.
- 17 14. To ensure peace and quiet, and for the safety of patients, staffing is required at the  
18 facility 24 hours a day 365 days a year.
- 19 15. Minimum staffing requirements are set with the goal of guaranteeing adherence to the  
20 same high standards required by the accreditation agency.

21  
22 Items 16 – 18 remain the same and address the requirements that the facility receives approval  
23 through Site Plan Review and as a Special Exception as outlined in the Zoning Ordinance.

- 24  
25 19. Three new definitions -- “Residential”, “Outpatient Services” and “Traffic Flow” --  
26 are proposed.

27  
28 Regarding the standards set in his definition for Residential, Mr. Gibbons noted that  
29 requiring that patients reside full time at the facility means that traffic to and from the facility  
30 will be reduced. In addition, a 21-day minimum stay is required of patients, and this helps  
31 address the possibility the facility could turn into something other than what it is intended to be.

32  
33 The Applicant is in the process of completing a traffic study to fill in the numbers that  
34 will define the maximum traffic flow that will be permitted at the facility. Mr. Gibbons added  
35 that the Applicant believes that the combination of these standards – a minimum stay, a  
36 requirement for full-time residency, limited delivery times, full-time staff requirements, and  
37 limiting the numbers of vehicles using the facility on a daily basis - will all work to limit traffic  
38 and to guarantee that there will not be heavy traffic associated with this facility.

39  
40 Bill Kelly: Mr. Kelly began by suggesting that Board members not “get too deep into the  
41 weeds” when asking questions about this proposal for two reasons: 1<sup>st</sup> – the Board just received  
42 this draft which reflects the Applicant’s refinement of their proposal, and it will take some  
43 absorbing for members to understand it fully; 2<sup>nd</sup> – there are different issues raised in Matt  
44 Manahan’s letter on behalf of his clients. Mr. Kelly is still working through all the different  
45 issues that have been raised, but he has only two real interests in this process: The first is clarity  
46 - he wants the Ordinance language to be very clear so it is easy for voters to understand exactly  
47 what they will be voting on; and second, he wants to avoid unintended consequences. An

1 illustration of this might be someone coming into the facility to treat a different set of  
2 disabilities. He needs to ask what it means to adopt this ordinance when a very different model  
3 than the one that is before the Board might ask to use this property. He is in discussion with both  
4 Mr. Gibbons and Mr. Manahan, and believes that the proposal, especially with regard to the  
5 language, will be much further along in two weeks than it is this evening. That would be a good  
6 time for the presentation of a more refined proposal and more in-depth questions. Mr. Kelly  
7 added that Mr. Gibbons has been listening to the neighbors and incorporating their concerns, but  
8 the neighbors just saw this version of the proposal today - if they have even seen it at all - and  
9 have not had time to respond.

10  
11 Questions from the Board:

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13 Kim Tuttle: Ms. Tuttle asked if the proposal, which seems long, would better fit into the current  
14 Ordinance if all the details were made part of a definition of a Residential Treatment Center  
15 instead. She noted that there is already a definition of Residential Use in the Ordinance that  
16 would have to be addressed in the process. Ms. Tuttle asked Bill Kelly if the Ordinance can  
17 require that the Operator evaluate patients, or require they have a contract – she wonders if this is  
18 too much to request.

19  
20 Mr. Kelly replied that it would not be unlawful to make these requirements part of the  
21 Ordinance, but that it would be unusual to do so. The problem comes when the specificity  
22 requested by those with concerns that the proposal is too open-ended, comes up against the rights  
23 of someone else making a proposal down the road to use this property to treat a different set of  
24 disabilities. Federal Courts are inclined to give relief to the new operators of these facilities from  
25 following the specifics of an ordinance. These issues are part of the discussions he is having with  
26 the two attorneys. Mr. Manahan raised the question of whether or not it would be a better  
27 alternative to avoid the specifics of this proposal and use contract rezoning. Contract rezoning is  
28 effective with odd properties that have particular uses that are presented for them. Contract  
29 rezoning often starts when someone comes forward with a specific idea to use a property, and the  
30 level of specificity that is required for people to reach a comfort level is so great that it drives the  
31 process toward a detailed contract between the municipality and the owner. The problem is  
32 avoiding the situation where an owner who comes forward with a proposal is mired in the  
33 discussion of these details for two or three years; there are mechanisms to use to avoid this, but  
34 he is not prepared to get into that detailed a discussion of the process this evening.

35  
36 Because Mr. Manahan had referenced the State's statute governing contract rezoning, Mr.  
37 Kelly has provided the Board with a copy of Title 30A§3452. Noting that contract rezoning has  
38 never been done in Camden, Mr. Kelly went on to say that it doesn't mean that it couldn't be  
39 done with a minor change to the Ordinance. Adding this contract provision to the Zoning  
40 Ordinance would also require voter approval.

41  
42 There is a benefit to towns in using contract zoning because, when the parties and the  
43 town have worked out the specific details of the contract, it is much less likely that any  
44 subsequent owner or operator would make a claim that they had been discriminated against. If  
45 those specific details are contained in an Ordinance instead, that claim can be made because the  
46 detailed requirements are not particular to the property, and a new operator may ask that their

1 needs be accommodated. Contracts, however, speak to the facts of the particular situation on a  
2 particular piece of property, and there can be no claim of discrimination.  
3

4 The Applicant wants to make very clear to the abutters what they will be doing on the  
5 property, and the abutters want a certain level of comfort that nothing else but this can happen  
6 here. Without including a great deal of specificity in the Ordinance, this is a challenge.  
7

8 Ms. Tuttle added that she likes the proposal that the Applicant has put together, especially  
9 the provision requiring that the ten acre parcel is pre-existing.  
10

11 Richard Householder: He notes that the proposal addresses staffing, but that the request for  
12 McLean’s proposed staffing levels, and for a copy of an organizational chart, is still outstanding.  
13 Mr. Gibbons apologized that it had not been submitted, and offered to provide a copy the next  
14 day. Mr. Wilson informed the Board that their request had been that this information is  
15 submitted for the August 29 meeting, and members agreed that is still an acceptable due date.  
16

17 Mr. Householder believes that the proposal’s specifics address many of the concerns  
18 raised at the last meeting, and suggests that when the language is ironed out by the attorneys, the  
19 Board will have more questions.  
20

21 John Scholz: He deferred his questions until the attorneys have finished their work, and the new  
22 language is available.  
23

24 Jan MacKinnon: Ms. MacKinnon agrees with Ms. Tuttle that the proposal seems more like a  
25 definition than an Ordinance. She is very interested in hearing about contract rezoning, and asked  
26 Mr. Kelly if he had an example to share. He explained some details of the long and complicated  
27 process involved when the City of Belfast negotiated a very successful contract for the  
28 construction of the Belfast Shipyard.  
29

30 Ms. MacKinnon asked if the contract runs with the property and Mr. Kelly replied that it  
31 did – it is a “use” agreement, and cannot be changed unless the town approves the requested  
32 changes. Ms. MacKinnon asked what happens if there is an egregious breach of the stipulations  
33 – is the contract revoked and the uses revert back. Mr. Kelly replied that the same conditions are  
34 imposed to contracts as to any other zoning use. If the use is violated, the owner is subject to  
35 daily penalties, to attorneys’ fees, and to subjunctive relief where a Court can order a “stop” to  
36 the use until the situation is rectified.  
37

38 Kim Tuttle: Ms. Tuttle asked if there is a down side to contract rezoning, and Mr. Kelly replied  
39 that there can be the perception that someone is being treated differently. He suggests that  
40 contract rezoning should be used only in unique situations for unique properties. A town would  
41 never have a contract for a commercial property on Main Street, for example, because it causes  
42 problems. It creates inconsistencies in approvals, and it can create animosity among owners of  
43 similar properties who didn’t get that same deal. For the sake of consistency it should be used  
44 sparingly and only in unique circumstances. He is not saying that Fox Hill rises to that level, but  
45 contract zoning is a tool to consider.  
46

1 Lowrie Sargent: Mr. Sargent shared some of his experience with the Belfast Boatyard project,  
2 and believes that as a result of the contract negotiations, everyone ended up pleased with the  
3 outcome – the neighbors, the City and the businesses involved were all satisfied with the end  
4 product. He agrees that this can be a great tool, but that to give people who live in certain zones  
5 some assurance that the uses will remain as they are he also believes it should be used sparingly.  
6

7 Mr. Sargent asked the Applicants to give better definitions and some explanation of the  
8 terms they are using in their proposal when they deal with the medical profession; this is an area  
9 of expertise where the Board has no actual experience and they need more information than they  
10 have been given.  
11

12 Mr. Sargent asked about the different terms Mr. Gibbons used when he referred to client  
13 contracts. The words owner, operator and owner-operator are all used, and Mr. Sargent asked if  
14 there is a reason for doing this. Mr. Gibbons replied that he is trying to provide for different  
15 forms of operators – one could be an owner with an operator leasing the property, or they might  
16 be an owner who operates the facility himself; he will try to make that distinction better.  
17

18 Mr. Sargent remains concerned about the notion that the Planning Board would approve  
19 any future operators. Because he believes it is asking too much of the Planning Board to weigh  
20 in on any decision regarding the suitability of an operator, he would rather the proposal say that  
21 any operator has to satisfy specific requirements. The list of criteria that he is proposing for this  
22 purpose should be very clear, so it is clear to the Board when those criteria have been met.  
23

24 Mr. Householder: He has a question regarding the Ordinance and the possibility of  
25 discrimination and he wonders what kind of language the lawyers are discussing that would  
26 “mellow” this problem. Mr. Kelly replied that he is still raising the issue regarding what  
27 happens if a different disability provider shows up and claims discrimination. Although it may  
28 be impossible to predict all the scenarios, his job is to make sure that the Ordinance does not  
29 discriminate on its face. The language must be neutral, and he is suggesting they consider how  
30 to re-define the substance abuse disorders that are treated while still addressing the issues that  
31 really impact the neighbors – like traffic. He believes the Applicant has done a good job of  
32 listening to, and responding to, neighbors concerns. He is suggesting that they looking at what  
33 language they might take out and still address those concerns so they can prevent creating a  
34 discriminatory situation.  
35

36 Ms. Tuttle: She asked if contract rezoning would require a Zoning Ordinance amendment. Mr.  
37 Kelly replied contract zoning is lot specific within a zone, not zone specific. Any amendment to  
38 the Zoning Ordinance would add a permitted use saying that contract zoning for this particular  
39 property can occur. Some towns do have elaborate Contract Rezoning Ordinances, but doing  
40 that is much more involved.  
41

42 Mr. Kelly added that it was premature to have detailed discussions on the process until  
43 the Select Board has spoken on the subject; he needs to have this discussion with them first. He  
44 added that he has no idea how they will respond to the concept, but it is important to the process  
45 if the Select Board has no interest in seeing contract zoning in Camden. If they do examine the  
46 issue, they would first examine the property itself to decide what about it calls for special  
47 treatment. If they find, for example, that there is evidence to show that the residence *is* obsolete

1 as a residence because of the cost of upkeep, etc., and they determine than none of the other uses  
2 already allowed are appropriate for the property, then they might find that contract rezoning  
3 would be appropriate here. The Planning Board does not have to wait for the Select Board's  
4 decision. The discussions can be parallel, and the Board can continue their discussions at the  
5 same time Mr. Kelly is speaking with the Select Board. Mr. Kelly replied that Mr. Gibbons will  
6 be the one to present their final proposal. It may be similar to the request the Board has now, or  
7 they may find they need so many specifics to address everyone's concerns that they will bring  
8 forward a request to consider contract rezoning; they are the ones making the request, and this is  
9 their decision to make.

10  
11 Paul Gibbons: In general, in making zoning decisions, weighing the issues and looking at the  
12 merits of the request is the basis of the decision. Looking at the merits through contract zoning  
13 can be more difficult for the Applicant. He does know, after having practiced municipal law for  
14 over forty years, that there are many mid-coast towns where this process will never be accepted  
15 because of the fear that it opens the door to rezoning every property in town. He and his client  
16 will continue to work to make everyone happy with their proposal, and are open to continuing  
17 the discussions.

18  
19 Ms. Tuttle: She asked Mr. Wilson about the packet he had put together regarding the properties  
20 that would be affected by the Applicant's change to the Zoning Ordinance. Mr. Wilson noted  
21 that this is a work in progress, and it needs explaining. He is in the process of correcting the  
22 many errors he is finding in the mapping program and the data, and will provide an updated  
23 version.

24  
25 Mr. Sargent informed the audience that on August 29, Mr. Gibbons will do a presentation  
26 of the proposal, and then the floor will be opened to public comments. Anyone who can't attend,  
27 or who doesn't want to speak in public, can send comments or questions by letter or by email.  
28 He also informed them that the Planning Board meeting is now streamed live, and can be  
29 watched over the internet as well as cable.

30  
31 Mr. Wilson: He made several recommendations for reorganizing the proposal to better fit within  
32 the Ordinance, and suggested that Mr. Gibbons needs to be consistent in the use of terms. Mr.  
33 Gibbons thanked him and the Board for their many suggestions. He added that he understood  
34 that his job at this time is simply putting forward his proposal, and that the decision on just how  
35 it should be incorporated into the Ordinance will come once these discussions on the proposal  
36 have concluded.

37  
38 Matt Manahan: He asked what abutters are supposed to be commenting on at the PIGM. They  
39 only got this draft this afternoon, and if they don't have anything ahead of the next meeting, they  
40 will be in the same position of commenting on a draft that has changed. Mr. Gibbons apologized  
41 that this draft was not available sooner, and committed to having his next draft available seven  
42 days before the meeting.

1 **4. DISCUSSION:**

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3 1. Minor field adjustments: There were none.

4  
5 2. Change Public Hearing procedures to have two ‘comment’ portions from public rather than  
6 two ‘pro-con-comment’ sections. Change last allowable time for starting a procedure from 10 pm  
7 to 8 pm.

8  
9 Mr. Sargent informed the Board that the Select Board has changed their public hearing  
10 process, and for the sake of consistency, he recommends that the Planning Board adopt the  
11 changes outline above. Members of the Board agreed.

12  
13 3. The first Select Board – Planning Board joint workshop will center on the Southern Gateway  
14 and be held in late September or early October.

15  
16 Mr. Sargent informed the Board that the joint meeting of the Camden and Rockport  
17 Select Board has been postponed. At that meeting they were to have started discussions on the  
18 Southern Gateway project. Now the Select Board wants to discuss the project with the Planning  
19 Board, and Mr. Sargent asked members to begin thinking about the role they might play in  
20 planning this project and any recommendations they might have for the Select Board to discuss  
21 with Rockport.

22  
23 Mr. Householder suggested that the very first step in the process of redesigning the Route  
24 1, Camden Street, John Street, and Conway Road intersection is to speak with the property  
25 owner who has opposed the Town’s past efforts at solving the problems with this intersection. If  
26 the property still has the same owner, and if his position remains the same, there is no sense  
27 wasting time in discussions that will go nowhere. Don White informed the Board that the  
28 Subway property now has a new owner, and that he can only presume that conversations with  
29 this owner regarding the intersection must be hopeful if the Select Board still wants to proceed  
30 with discussions. Mr. Sargent believes that it is premature to contact any property owners until  
31 there are actual ideas to discuss. But, he agrees and asks if the Board wants to take the time for  
32 these discussions if the one property owner still holds the same position. Mr. White replied that  
33 the sidewalk *must* be done, and this is the time to decide how to treat the intersection so that  
34 work doesn’t need to be redone. He also asked the Board to think about what changes in zoning  
35 the Board might propose for the area.

36  
37 Mr. Wilson informed the Board that new aerial photographs are coming, and he should  
38 have a very good photo to work with to show property lines for the lots in question regarding  
39 zoning changes.

40  
41 4. Mr. Sargent informed the Board that the Select Board has agreed that any decision regarding  
42 changes to the length of terms for Planning Board members should be made jointly. He asked  
43 the Board to think about the issues the Board has with shortened terms and how they would  
44 support keeping the terms the same so they can conclude this discussion at the next meeting.

45  
46 5. The Board discussed the attendance policy a bit at their workshop on 8-8. The Select Board  
47 may like to use this policy as a guideline for other committees and boards, and Mr. Sargent asked

1 members to start thinking about the policy and making notes about any changes they may want  
2 to institute. The Planning Board will hold this discussion at their next meeting.

3  
4 6. Future agenda items, discussion issues, & ideas – there was no discussion.

5  
6 7. Pending Applications (report): There are none.

7  
8 **MOTION by Mr. Householder seconded by Mr. Scholz** the Board amend their Policies and  
9 Procedures dated July 26, 2006, and have two “comment” portions rather than two “pro-con-  
10 comment” portions, and to change the last allowable time for starting a procedure from 10 pm to  
11 8 pm.

12 **VOTE: 5-0-0**

13  
14 8. Other:

15  
16 Don White: He informed the Board that the following items will be on the agenda at the next  
17 Select Board meeting: The River Business District and the Storage Trailer amendments; items  
18 concerning the development project at Ragged Mountain that the Committee wants to put on the  
19 November ballot; and the Harbor Committee’s revised Harbor Ordinance. Mr. White was not  
20 sure if the Planning Board wanted to comment on the Ordinance or not. Mr. Wilson informed  
21 the Board that none of the Harbor Ordinance where there is any interface with the Planning  
22 Board has been revised. The Board sees no reason to become involved, and is not aware of a  
23 requirement to offer comments. Mr. Sargent had searched the Charter to see if the Board had the  
24 duty to review the Ordinance, but did not find anything. He does think that the Charter is  
25 “dusty” and that a group should take on the work of updating and revising the document

26  
27 There being no further business before the Board, they adjourned at 7:15 pm.

28  
29 Respectfully submitted,  
30 Jeanne Hollingsworth, Recording Secretary