

1 **CAMDEN PLANNING BOARD**
2 **MINUTES OF MEETING**
3 **October 17, 2013**
4

5 **PRESENT:** Acting Chair Lowrie Sargent; Members Richard Householder, Jan MacKinnon, and
6 John Scholz; Alternate Member Richard Bernhard; Don White, Select Board Liaison; and CEO
7 Steve Wilson

8 **ABSENT:** Alternate Member Kim Tuttle

9 **RECUSED:** Chair Chris MacLean
10

11 The meeting of the Planning Board was convened at 5:00 pm in the Camden Opera House.
12

13 **PUBLIC INFORMATION GATHERING MEETING**
14

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

16 No one came forward.
17

18 **FHRE Proposed Amendment to the Zoning Ordinance**
19

20 Mr. Sargent introduced the format for this Informational Meeting, and outlined the
21 process of a Zoning Ordinance amendment from its origin as a request to the Board to a final
22 vote at Town Meeting, stressing the fact that this proposal is now in the information gathering
23 stage. There will be many opportunities when the public will have the chance to speak and ask
24 questions. He informed the audience that comments this evening should be confined to the two
25 agenda items: 1st: An Economic Analysis will be presented by the Fox Hill representatives; and
26 2nd: Explanations of arguments will be presented by the Attorneys representing the Applicant
27 and the Attorney representing abutters opposed to the proposal. Following each presentation the
28 Board will ask questions. Then the opposition and the public will be given five minutes per
29 person to ask questions and offer comments; they should be specific to the particular
30 presentation.
31

32 Town Attorney Bill Kelly spoke to clarify the role of the Planning Board in the
33 Ordinance amendment process. Recent emails and letters to the editor from members of the
34 public make it obvious that there is still confusion and misunderstanding about the amendment
35 process, especially with regard to the Planning Board's scope of involvement. In summary:

- 36 • Some of issues raised by the public are not before the Board this evening – the scope of
37 tonight's meeting is informational only. The record upon which the Board must make
38 their decision is created at the several Public Hearings yet to come. Statements made this
39 evening that are intended to be part of the documented record will have to be made again
40 at a public hearing. This evening is an informal opportunity for the public to gather
41 information, ask questions and offer relevant comments.
- 42 • The Planning Board acts as a review board for issues involving the Town's Land Use
43 Rules and Regulations. They must look at this request for an amendment with a narrow
44 scope of view, and make a recommendation whether or not this particular amendment
45 should allow this particular use to be created. The Board's recommendation, coming
46 from a land use perspective, is whether or not this use will fit.

- 1 • The meeting this evening will also focus on the Comprehensive Plan and other legal
- 2 issues
- 3 • Standing: The issue of whether or not the Applicant, a corporation, has the right to bring
- 4 a request for an amendment to the Board - standing - has been raised several times; it is
- 5 not an issue. There is a very low threshold that determines whether or not someone can
- 6 bring requests before the Board, but usually they come from someone with an interest in
- 7 a real property. The discussion regarding whether or not a corporation should be able to
- 8 request an amendment is political - a discussion that is appropriate to have with the Select
- 9 Board.

10 11 **2. Presentation of FHRE Economic Analysis**

12
13 The report, titled *The Economic & Fiscal Impact of a Proposed Alcohol Rehabilitation*
14 *Facility on the Town of Camden, Maine*, was prepared by Planning Decisions, Inc., and dated
15 August 22, 2013.¹ Chuck Lawton, Chief Economist at Planning Decisions, presented a Power
16 Point summary of the report, prepared at the request of the Applicant, as an examination of the
17 new spending in that would result in Camden from the business FHRE proposes for Fox Hill. In
18 summary:

- 19 • The impact on new spending in community was evaluated, in part, on the numbers of
- 20 jobs that would be created, and the amount of income resulting from those new jobs that
- 21 would be spent in the area
- 22 • The new money would come from different sources over time in varying amounts; the
- 23 number of jobs created, and the income dollars available to spend, also vary over time

24
25 *Direct Economic Impact* is the measurable impact created by the money flowing directly from
26 Fox Hill into the local economy. These are the five categories of “direct impact” money and
27 their estimated level of impact:

- 28 ➤ Capital Expenditures is the initial one-time spending to create the facility: \$1.5M new
- 29 dollars creating 17 new jobs paying an average of \$525/week
- 30 ➤ Operational Expenditures are an on-going source of new money which include: the
- 31 costs of manning the facility; the care and feeding of the clients; and other normal
- 32 business operating expenses: \$2,317,000 in new dollars; 20.7 new clinical staff
- 33 positions paying an average of \$1,250/week; and 3 new facility staff positions paying
- 34 an average of \$994/week
- 35 ➤ Physical Plant Expenditures, also on-going, are costs related to the facility buildings
- 36 which are not related to patient care – maintenance staff and benefits; mortgage
- 37 payments to local lenders; property taxes and property insurance; and utilities:
- 38 \$800,000 new dollars and 2 new jobs paying an average of \$1,202/week
- 39 ➤ Pen Bay Medical Center reimbursement for services to clients (on-going): \$105,000
- 40 new dollars create 1 new hospital job paying \$963/week

¹ The full report is available on the Town’s website as a separate attachment to these minutes, and can be found by following the link below and selecting Planning Board Minutes of 10/17/2013 Economic Survey; or a copy can be obtained at the Town Codes Office.

http://www.camdenmaine.gov/index.asp?Type=B_BASIC&SEC={6DFECCDB-1650-4C9F-8152-9144DC12391E}&DE={2D72D054-A5ED-48A4-801E-BEAC68D18EDF}

- 1 ➤ Conferences are on-going: Two annual off-site conferences held locally for training,
2 etc.: \$233,000 in new spending and 2.3 new jobs paying an average of \$481/week
3

4 *Estimated on-going impact of Direct Spending (not including initial Capital Expenditures):*
5 *\$3,525,000 in new dollars creating 29 new jobs paying an average of \$1,227/week.*
6

7 *Indirect Economic Impact:* Created when those who receive money directly from Fox Hill
8 spend that new money themselves: Employees spend their salaries; and vendors hire and pay
9 new employees and purchase additional supplies in response to increased business.
10

11 *Estimated on-going impact of Indirect Spending: \$586,000 in new dollars creating 6.1 new*
12 *jobs generating \$193,000 in new salaries.*
13

14 *Induced Economic Impact:* Spending Indirect Money has a multiplier effect called Induced
15 Impact: Indirect money trickles down as those receiving the money indirectly spend it. New
16 dollars are spent, creating more new jobs and more new income dollars to spend, and so on.
17

18 *Estimated on-going impact of Induced Spending: \$1,088,000 in new dollars creating 10.4 new*
19 *jobs generating \$2,837,350 in new salaries.*
20

- 21 ✓ ***Total Economic Impact of the Fox Hill Facility in sales to local businesses: \$6,629,000 in***
22 ***new income creating 62.5 new jobs with incomes totaling \$2,837,350.***
23

24 Mr. Lawton also addressed the impact on State and Local Taxes, income from fees, and
25 the Noncommercial Economic Impact of the new Facility including access to the expertise of
26 McLean Hospital staff in developing drug and alcohol awareness programs in local schools, for
27 example.
28

29 *Why should the Planning Board care about an Economic Study?*

30 The purpose of the Planning Board is to look at where the Town is headed and the
31 problems Camden may have in the future. He suggests four major concerns: Declining and
32 aging population; lack of year-round well-paying jobs; decreasing year-round population and
33 increasing seasonality of residents and employment; and a decreasing tax base resulting as
34 inflated real estate prices return to “normal” and the State valuation of the Town decreases.
35

36 *Is the Fox Hill proposal relative to these concerns?*

37 Yes – it presents an opportunity to address the issues: The facility will bring new year-
38 round residents with year-round professional jobs that pay well; they will buy homes and spend
39 money locally.
40

41 **QUESTIONS from the BOARD:**
42

43 Mr. Sargent asked what level of confidence Mr. Lawton has that these number will be
44 achieved.

45 Mr. Lawton replied that he is confident that these results could be realized, but they
46 depend on the extent to which the new money is spent locally, and the extent to which the newly
47 created jobs and incomes “live” here. The more employees that live locally, the more local

1 vendors are impacted; if the spending from incomes goes to vendors outside the area, the impact
2 on the local economy will decrease.

3
4 Mr. Sargent asked if Mr. Lawton had ever done a follow-up study to test his findings –
5 Mr. Lawton has not because no client has ever requested a follow up.

6
7 Mr. Scholz asked if the impact would remain the same if a different commercial
8 operation came to Fox Hill, and Mr. Lawton replied that it would depend on how many of the
9 variables remained the same. The initial rehab costs might have the same impact, but if fewer
10 employees are hired, or vendors or supplies come mostly from out-of-town, then the impacts
11 would change.

12
13 Mr. Scholz asked if the impact of residential development of the Fox Hill property as
14 opposed to the proposed facility could be compared.

15 Mr. Lawton said it would be necessary to do a cost/benefit analysis to compare the two,
16 and that was not part of the study that Planning Solutions was retained to do. Mr. Lawton did
17 estimate that there would be the same kind of short-term capital impact in the building stage of a
18 residential development, but not the on-going operational impact a facility employing 26
19 professional people would have. If asked to do this kind of study, he would apply an average
20 consumption pattern to future residents of new homes to determine the on-going impact. An
21 argument was raised that the residents of these homes would also have employment income to
22 spend, and the property tax impact might be greater with several properties being taxed; Mr.
23 Lawton did not speculate on those possible residential impacts.

24 25 **Opponent's Rebuttal: Matt Manahan**

26
27 Mr. Manahan's clients contracted with Todd Gabe, a Professor of Economics at the
28 University of Maine, to review Mr. Lawton's study. Gabe's study, titled *Review of Economic*
29 *Impact Report of Proposed Alcohol Rehabilitation Facility in Camden, Maine* was dated October
30 7, 2013, and was submitted to the Planning Board attached to a letter dated October 10, 2013,
31 from Mr. Manahan's law firm.²

32
33 Mr. Manahan did not review this study with the Board, but stated that the rebuttal takes
34 issue with, and criticizes, many of the findings in the report. Important to note is that even if the
35 economic benefits suggested by Mr. Lawton were to be realized by Fox Hill – and Mr. Gabe
36 submits that they are very unlikely to be achieved - these same benefits could be realized on any
37 of the other 85 pieces of property in Camden where this use is already permitted. This economic
38 benefit to the Town cannot be tied specifically to Fox Hill. More important he believes, is that
39 this report shows this is clearly going to be a commercial use. But it is not the economic impact
40 of this proposal that should concern the Board. This is an Ordinance Amendment, and the focus
41 should be on looking at the impacts of a proposal to allow a commercial use in the Coastal
42 Residential District. The fact that the Applicants have commissioned this study highlights the

^{2 2} The full report is available on the Town's website as a separate attachment to these minutes, and can be found by following the link below and selecting Planning Board Minutes of 10/17/2013 Gabe Review; or a copy can be obtained at the Town Codes Office.

http://www.camdenmaine.gov/index.asp?Type=B_BASIC&SEC={6DFECCDCB-1650-4C9F-8152-9144DC12391E}&DE={2D72D054-A5ED-48A4-801E-BEAC68D18EDF}

1 commercial nature of this property, and a commercial use does not belong in a residential
2 neighborhood.

4 **Comments from the Public**

5
6 Felicity Farrell: If the property were residentially developed it would exceed those benefits
7 proposed for the facility, and the impact on other property values would not be as significant. No
8 one will want to come to Fox Hill in the winter, and the facility won't be able to attract enough
9 clients on a year-round basis to succeed. What are success rates of clinics so far from the base
10 hospital? She also believes there are serious questions with regard to the legality of the
11 mortgage.

12
13 Dennis McGuirk: If it is true that $\frac{3}{4}$ of the jobs in Camden are filled by people who don't live
14 here, that means that of the 29 jobs being created by McLean, only about 8 would go to Camden
15 residents. He wonders if that is the assumption applied in this study to determine spending.
16 Mr. Lawton responded that it is not; the impact of employee spending is based on a model using
17 spending by residents in Knox County in these income brackets adjusted for money spent outside
18 of Camden. The actual impact is an unknown until it is known where the employees will live -
19 spending will take place in and around where they live. This is a regional economy already, and
20 the impact of the facility will also be regional.

21 Dr. Levendusky, McLean Hospital: The known factors are: 1) Wages which are anticipated to be
22 in the \$30,000 range for the clinicians, and from \$150,000 - \$200,000 for the doctors; and 2)
23 Food costs which will run at \$300,000 - \$350,000/year – all of which *will* be spent in Camden.
24 In their experience at other off-site treatment centers, staff tends to live near their work. He
25 believes that the probability is extremely high that the employees at Fox Hill will want to live in
26 Camden, or in towns near-by.

27
28 David Hague: He questioned the validity of the real estate values used to determine the
29 downward trend of valuations in Camden; he believes they are skewed by the impact on real
30 estate values of MBNA's presence in and around Camden.

31
32 Dave Waulk: Did Mr. Lawton look at how many Camden students might stay here, or even
33 return to the area, because of increasing job prospects; and, did he look at how many visitors
34 would come to the area to visit clients or to attend conferences? He estimates an additional
35 \$500,000 in spending on food and lodging sales will come from visitors. Mr. Lawton replied
36 that they looked at the conference attendees – those figures are included, but not at client visitors,
37 and not at an impact on retaining young people.

38
39 Mr. Waulk asked if it would be feasible to build this facility in another part of Town, and
40 Dr. Levendusky shook his head.

41
42 Mr. Walk wonders if Fox Hill was to become a residential development, would the
43 homes sell – there are many expensive homes that have been on the market for a long time. He
44 also asked if the number of unsold homes in the Town is reflected in the State's valuation, and
45 Mr. Lawton replied that this is factored in indirectly as the prices of these properties are reduced
46 over time, and when they are sold below the seller's purchase price.

1 Deborah Oliver: She didn't see a figure in Mr. Lawton's report that indicated what kind of
2 [business] property tax would be assessed on the facilities business equipment, etc. Mr. Lawton
3 replied that the property tax figure is based on the residential use. He does not have a business
4 equipment tax estimate, and deferred to the Applicant to provide that figure.
5

6 Mark Dierckes: With regard to the 83 properties where Professor Gabe says the same economic
7 impact could be realized were the facility to be built elsewhere in Town, Mr. Dierckes suggests
8 that if the operator of a facility were to enter into a lease agreement, or if they decided not to
9 lease but to build elsewhere instead, an impact statement could be developed for that particular
10 property, but not before.
11

12 There were no other comments or questions, and the Economic Report portion of the meeting
13 was closed.
14

15 3. Parties Legal Arguments 16

17 **Matt Manahan - representing abutters opposed to the proposal:** 18

19 The two points the Board should consider do not include the economic impacts, but
20 instead focus upon the Zoning Ordinance Amendment that is proposed:
21

22 ✓ Is this amendment process for rezoning a legal process?
23

24 They believe not, and argue that the proposal is actually Conditional Zoning "in sheep's
25 clothing." It is the very kind of zoning change which the State intends to regulate under the
26 Conditional and Contract Zoning Laws because they contain safeguards for the municipality to
27 implement. Mr. Manahan read from the definition of Conditional Zoning (Title 30-A §4223),
28 emphasizing the purpose "...to permit the use of that property subject to conditions not generally
29 applicable to other properties similarly zoned." This proposal is a sham – a way to avoid the
30 Conditional Zoning Statute. Referencing the revised proposal at VII-6 (5) (a), (b) and (c), and
31 the conditions for approval, Mr. Manahan said that F.H.R.E. has been clear in their effort to limit
32 this use to Fox Hill and one other property in the CR District. These are conditions that would
33 not be applicable to other properties in this district, and the proposal meets the definition of
34 Conditional Zoning.
35

36 ✓ Is this amendment appropriate from zoning and planning perspective?
37

38 No. This proposal is Spot Zoning, which is discouraged by the courts and the State
39 Legislature because it is bad planning. The only reason some instances of Spot Zoning have held
40 up under court challenges is that no-one brought up the issue of compliance with Conditional
41 Zoning.
42

43 *Conditional Zoning* 44

45 State Law requires that Spot Zoning comply with the provisions of Conditional Zoning,
46 but this proposal does not protect the integrity of the zoning process; does not protect existing
47 residential neighborhoods; does not encourage uniformity of uses in the area; and, it benefits just

1 one owner and not the entire Town. Two additional requirements imposed upon Conditional
2 Zoning must be met: Camden must have a provision within its Ordinance to allow Conditional
3 Zoning – there is none; and, the proposal must be in compliance with the Comprehensive Plan.
4

- 5 • Is this amendment in compliance with Comprehensive Plan?
6

7 The Maine Supreme Court has said that zoning ordinances are legal when they are in
8 “basic harmony” with the Comprehensive Plan. It is up to the Planning Board to make that
9 initial determination, and Mr. Manahan will show why this proposal is not consistent with
10 Camden’s Plan:
11

12 Chapter 18: Future Land Uses

13 Page 18-8: Coastal Scenic Area: Within this area, Bay View Street is classified a
14 ‘transitional area’ and the Plan envisions low intensity uses be allowed here; and, it suggests
15 that nursery schools and day care centers are two examples of the kind of light commercial
16 uses that should be permitted.

- 17 ➤ A substance abuse treatment facility is not like either of these uses: It serves adults, not
18 children; and it operates 24 hours a day seven days a week. It is much more like a
19 Hospital, which *is* permitted within the B-2 and B-3 Districts.
20

21 Page 18-4: Growth Areas: Extended Village: “The commercial uses should be limited to
22 those that meet the day-to-day needs of the residents of the neighborhood.”

- 23 ➤ Although this requirement does not apply specifically to the Coastal Scenic Area, the
24 theme of protecting the residential neighborhoods is held in common, and
25 neighborhoods in residential districts like the Coastal Residential District, should be
26 even more protected than those in the Extended Village Area.
- 27 ➤ People depend on nursery school and day care centers in their daily lives – they are
28 compatible with small commercial uses; people wouldn’t be depending on a residential
29 treatment facility as a small scale commercial use, nor would they be walking to it.
30

31 ✓ *The proposal is not consistent with this Section of the Plan.*
32

- 33 • The Plan contemplates protecting residential neighborhoods from commercial activity:
34 Chapter 10: Land Use Patterns:

35 Page 10-5: Commercial Land Use:

36 (4) The Town recognizes the need the need for Home Occupations “of a type and scale that
37 do not disrupt residential neighborhoods.”

- 38 ➤ Although this addresses Home Occupations, it obviously must be even more applicable
39 to larger-scale commercial activity in residential neighborhoods
40

41 Chapter 19: Land Use Regulation:

42 Page 19-2: Zoning Ordinance:

43 (3) “Home occupations, allowed as a matter of right, should be continued, provided that
44 standards to protect residential character are retained and enforced.”

- 45 ➤ A substance abuse facility, which includes ancillary offices and out buildings, does not
46 protect residential character

- 1 • The Comprehensive Plan repeatedly asserts the principle that “upholding the value and
2 character of established neighborhoods” maintains an appealing quality of life; the FHRE
3 proposal violates this principle:
4 ➤ Chapter 17: Goals, Policies and Implementation
5 Page 17-6 says that Land Use Regulations should protect established residential areas.
6 (I could not find this language to cite it more specifically.)
7
8 ➤ Page 17-19: (5) “Space and bulk standards should be refined in a way that will ensure
9 that any increased density of development will maintain a desirable village environment
10 and not threaten the value and character of established neighborhoods.”
11 ✓ *The zoning proposal is inconsistent with these provisions as well.*
12
13 ➤ In *Smethurst v. Stetson*, the Penobscot County Superior Court vacated an ordinance that
14 was not in compliance with the Town of Stetson’s Comprehensive Plan. The Town had an
15 ordinance which divided the Town into two categories for determining minimum lot
16 frontage, lot size and dimensions based on whether the lot was on a private way or a public
17 way. However, Stetson’s Comp Plan divided the Town into many residential districts “to
18 preserve the small town rural character of the Town of Stetson” with varying requirements
19 intended to protect residential districts. The ordinance was found inconsistent with the
20 Comp Plan by the court because it did not apply different standards within the areas created
21 by the Comp Plan, but instead relied upon a different basis – a private or public street - no
22 matter where in Town the property was located.
23 ➤ Mr. Manahan argues that *Smethurst* is relevant to this zoning proposal: A zoning
24 ordinance was struck down because it was not in compliance with the Comp Plan.
25 Camden’s Comprehensive Plan focuses on protecting residential uses, and this
26 proposal for a commercial use in a residential area is not consistent with the Comp
27 Plan.
28
29 • Is the use being permitted by Conditional Zoning consistent with the existing permitted
30 uses in the zoning district?
31 ➤ There are no existing commercial uses in the CR District around Bayview Street
32 ➤ There are only five existing commercial uses in the rest of the CR District: 4 hotels or
33 motels and 1 boat storage facility which he believes are grandfathered uses. Not only
34 are they not in the Bayview Street area, they are not consistent with a substance abuse
35 facility
36 ✓ *A substance abuse facility is not consistent with the uses in the Coastal Residential District*
37
38 • Is this use consistent with the uses permitted in the district?
39 ➤ The uses permitted in the CR District are outlined in the Ordinance: Outdoor storage of
40 boats, and, institutional and commercial uses permitted by Special Exception – nursery
41 schools and day care centers, and the limited expansion of hotel and motels.
42 ✓ *None of these permitted uses are consistent with a substance abuse facility, and the State*
43 *Statute would be violated if this were allowed*
44
45 • Do the conditions imposed by the amendment relate only to the physical development or
46 operation of the property?
47

- The Applicant has proposed several conditions for approval: A minimum lot size of 10 acres; a requirement that patients can't be court ordered; a minimum age for clients; and a requirement for accreditation are examples of conditions that do not relate to the physical development or operation of the property.
- ✓ *These provisions run afoul of the Conditional Zoning Statute*
- ✓ ***The proposed amendment meets the definition of Conditional Zoning and must, therefore, meet the requirements of Conditional Zoning in State Law; it does not meet these requirements.***

Unintended Consequences

- Once the Town opens the door to allow this substance abuse facility in the CR District, it is opening the door to all other kinds of substance abuse facilities in the CR District pursuant to case law and the Equal Protection Clause of the Constitution – specifically, the Fair Housing Act (FHA) and the Americans with Disabilities Act (ADA):
 - The Town must accommodate “similar” facilities -- juvenile treatment facilities, court-ordered treatment facilities or methadone clinics
 - The Town cannot discriminate against facilities who want to locate here by applying artificial limitations on the underlying use. The courts require “reasonable accommodation,” and have not let stand standards similar to those proposed by McLean when they were challenged as being arbitrary and discriminatory
- The conditions that McLean has included in their proposal are artificial:
 - The minimum number of bedrooms: Courts have said that only allowing six bedrooms discriminates against a facility that needs eight bedrooms to be viable
 - The requirement to preserve an existing building: Why does it have to be an existing building? How does that reasonably relate to the use as a substance abuse treatment facility?
 - Ten acre minimum lot size: Why isn't nine acres OK?
 - Why does the primary building have to have 3500 SF of common space – why not 2500?
 - The unique setbacks, the minimum age of the clients, and specific staffing levels: The staffing levels happen to be the staffing levels McLean wants, but someone else may require fewer staff in their business model. These are artificial numbers.
 - A ban on court-ordered patients: Court ordered patients with a disability cannot be discriminated against – treatment for that disability is protected under the law
- ✓ *For all these reasons, the Courts will not let Camden limit the numbers or kinds of treatment facilities once the Town has said that it is an appropriate use in this District*
- ✓ ***Deny this proposal based on the illegality with regard to State Zoning Laws, and on the unintended consequences that will be suffered by the Town***

1 *The Solution – There is no need for rezoning*

- 2
- 3 • This is already an allowed use within Town, and the Town will not be excluding this
 - 4 treatment facility because it is already allowed within the B-2 and B-3 Districts.
 - 5 ➤ Residential Treatment Facilities are not specifically permitted, but Hospitals are:
 - 6 “HOSPITAL: An institution licensed by the state to provide human in-patient medical
 - 7 or surgical care for the sick or injured and including related facilities such as
 - 8 laboratories, out-patient departments, training facilities, central services facilities, and
 - 9 staff offices that are an integral part of the facility.” The facility will be licensed; and
 - 10 doctors and nurses will provide in-patient medical care for patients sick from their
 - 11 addiction to alcohol and drugs – the facility *is* a Hospital.
 - 12 ➤ Hospitals are a permitted use in both the B-2 and the B3 Districts and there are 76
 - 13 properties in the B-3 District, and 3 in the B-2, that can already accommodate this use
 - 14 ➤ It is not the Planning Board’s role to save F.H.R.E. from having made a premature
 - 15 decision to purchase this property
 - 16
 - 17 ✓ ***The facility is a Hospital that is allowed in two zoning districts so there is no need to***
 - 18 ***amend the Ordinance and open up the Coastal Residential District to this proposed use.***
 - 19

20 *Standing*

21

22 Mr. Manahan has raised the issue of standing several times, and he quoted the Camden

23 Charter which says at Section 15, Petitions for Articles in the Warrant, “Any qualified voter may

24 request the Select Board that an article be placed in the warrant and shall present in written form

25 the substance of the article.”

- 26 ➤ The Applicant is not a person and cannot vote.
- 27 ➤ Under the Charter it is the investors in F.H.R.E.- whoever they are - who should be the
- 28 Applicants. Because the Board does not know who the investors are, they don’t know if
- 29 any of them are Camden residents, or if they are voters.
- 30
- 31 ✓ ***The Applicant is not a voter so this Application is not consistent with the Charter. The***
- 32 ***process, therefore, is illegal. This alone, is sufficient reason to reject the proposal.***
- 33

34 Mr. Scholz asked Town Attorney Bill Kelly to address Mr. Manahan’s assertions here

35 and in his letters, and answer the question for the Board: Does this Applicant have Standing or

36 not?

37 Mr. Kelly responded by saying that he is not concerned with the Standing argument

38 raised by Mr. Manahan. What the Charter references, and what is permitted, in no way excludes

39 or limits the authority of the Planning Board, or the Select Board, to entertain - for whatever

40 reason or wherever it comes from - any article that is eventually presented on the Warrant. He is

41 of the opinion that the courts will not strike down an ordinance passed by the people based on the

42 allegation that it did not start the right way. Intent behind the legislation, or where it starts from,

43 is of no concern to the courts; only where it ends - with the vote of the Town.

44

45 Mr. Manahan asked why, then, is that language in the Charter? The Charter says the

46 request must start with a qualified voter, and the language of the Charter cannot be ignored; the

47 Charter makes it mandatory that the process begins with a voter in the Town.

1 **Cliff Goodall, Co-Counsel for F.H.R.E. – representing the Applicant:**

2
3 Mr. Goodall spoke to the role Camden voters will have in deciding this rezoning
4 amendment: The courts have continually re-emphasized that rezoning is a legislative act with
5 voters ultimately deciding whether an Ordinance gets amended; courts defer to this legislative
6 action and do not second guess the voters' decision.

7
8 Mr. Goodall responded to the issues raised in Mr. Manahan's October 10 letter:

9
10 *Standing*

11
12 The Town Charter does say that a qualified voter may petition the Select Board to put
13 something on the Warrant, but Mr. Manahan totally ignores the Maine Constitution:
14 Article 1 Section 15 absolutely guarantees the right of petition – there is no doubt about that.

15 Mr. Manahan also ignores the Rules of Construction that are in Maine Law: Title 1 §72
16 Subsection 15 says that the term persons may include corporations – therefore a corporation has
17 the right of petition.

- 18 ➤ These inherent rights cannot be denied. The Law Court would find, as a Constitutional
19 issue, that the Camden Charter should be changed to reflect the right of “people” to
20 petition

21
22 ✓ *Standing is a non-issue*

23
24 *No Need for Rezoning*

25
26 Mr. Manahan had argued there is no need for rezoning because, based on classifying the
27 facility as a Hospital as defined in the Zoning Ordinance, this use is already permitted elsewhere
28 in Town. Mr. Goodall referred the Board to that definition:

29
30 “HOSPITAL: An institution licensed by the state to provide human in-patient medical or
31 surgical care for the sick or injured and including related facilities such as laboratories, out-
32 patient departments, training facilities, central services facilities, and staff offices that are an
33 integral part of the facility.”

- 34 ➤ The Applicant is not getting the kind of license to provide surgery or medical
35 care; this will be a Residential Rehab Facility which requires a different kind of
36 license
37 ➤ There will be no laboratory or out-patient department and no training facilities

38
39 ✓ *This is not a Hospital.*

- 40
41 • What is permitted in B-2 and B-3 is this: “HEALTH SERVICE FACILITY: An out-patient
42 establishment furnishing medical and fitness services to humans, including the offices of
43 physicians, dentists, and other health practitioners, clinics, medical laboratories, blood banks,
44 and health clubs.”

- 1 • The Ordinance does not currently allow for a private Residential Treatment Facilities
2 anywhere in Camden.
- 3 ➤ The courts would find that this is an impermissible exclusion and will open the door if the
4 Town does not do this themselves, and it may not resemble the limited basis the
5 Applicants are proposing
- 6
- 7 • The ADA, the Equal Protection Clause, and other statutes Mr. Manahan relies upon to say,
8 “You let one in you let them all in.”, are not as broad as he is suggesting.
- 9 ➤ The courts have made it clear that a town can regulate these facilities in a reasonable
10 manner so they do not negatively impact the locations in which they are going to be
11 located
- 12 • The important question is: Do any of those regulations intentionally exclude other types of
13 facilities?
- 14 ➤ They won’t know. The Applicants are saying a facility has to be a Private Residential
15 Treatment Facility as they have defined it in the draft
- 16 ➤ The Ordinance already allows out-patient facilities that provide for abuse treatments
17
- 18 ✓ ***Reasonable ordinances will not be thrown out for a denial of Equal Protection, or for a***
19 ***violation of the ADA. Unless the Legislative Act is clearly, on its face, a violation of the***
20 ***Statute, the courts will defer to the Legislative Act and not substitute its own judgment***
21

22 *Consistency with the Comprehensive Plan and Spot Zoning*

23
24 Mr. Goodall explained the Statute’s language with regard to Zoning Laws and
25 consistency with Comprehensive Plans: Title 30-A §4352 2. “A zoning ordinance must be
26 pursuant to and consistent with a comprehensive plan adopted by the municipal legislative
27 body...” This is a legal term of art; it is not traditional common English usage that can be easily
28 defined in the context of this Statute. It does not mean “in conformity with” as a dictionary
29 would say, and examples of the extent to which this is a legal term of art can be found in Paul
30 Gibbon’s memorandum.

- 31
- 32 • An ordinance amendment can be found consistent as long as the Comprehensive Plan does
33 not specifically prohibit it. The legislative body makes the decision whether or not it is
34 consistent based on the record evidence it has in front of it. A court will examine the
35 amendment based on the record in front of it – all the materials submitted by the Applicant
36 regarding what is being proposed – and the language of the Comprehensive Plan itself.
37
- 38 • If the record is sufficient for the court to determine that the legislative body could
39 reasonably conclude that the Ordinance was consistent, they will defer to the legislative
40 body and let the Ordinance stand.
- 41 ➤ In 2012 the Maine Supreme Court said, in *Golder v. City of Saco*, “We reiterate here a
42 fundamental point—zoning is a legislative act. When addressing whether a zoning action
43 is consistent with a city’s comprehensive plan, pursuant to 30-A M.R.S. § 4352(2), the
44 “test for the court’s review of the city council’s rezoning action is whether from the

1 evidence before it the city council could have determined that the rezoning was in basic
2 harmony with the [comprehensive] plan.”
3

- 4 • In each case they review the Plan to see if there is anything there to support the amendment.
5 The case below is an instance when there was nothing mentioned in the Plan relating to the
6 amendment:
 - 7 ➤ In an Old Town case the Court found that the Plan was silent on the issue at hand, and
8 they determined that because the request to expand was not prohibited, it was consistent
9 with the Plan. This is not the normal English language interpretation of consistent, but it
10 is the Court’s narrow definition of what is consistent.
11

12 Mr. Goodall cited provisions from the Comprehensive Plan in support of his argument
13 that there are several instances where the voters of the Town of Camden found the Applicant’s
14 request to be consistent:
15

16 *Chapter 10: Land Use Patterns*

17 Page 10-2: Residential Land Use: The Plan divides the Town into three residential groupings of
18 residential districts, and on Page 10-3 the Transitional areas id defined to include the Coastal
19 Residential District (CR). The Plan is saying that the CR District is not a strictly residential
20 district, but a transitional district where strictly residential transitions to residential with some
21 commercial.

- 22 ➤ Mr. Manahan, and other opponents, argue that this is a strictly residential district; this is
23 not supported by the Plan
24

25 *Chapter 14 Historic Resources:*

26 Page 14-1: “...there are other areas of historic interest and character which, though not rising to
27 eligibility for listing [in the National Register], nonetheless important in preserving the Town’s
28 historic character.”

29 Page 14-3: In the list of possible additions to the inventory of properties listed in the National
30 Register of Historic Places is this:” 19th and early 20th century summer cottages not already in the
31 Chestnut Street Historic District...”

- 32 ➤ The Borden Cottage at Fox Hill is a historic summer cottage of the early 20th century
33 (1903) which the Plan says is important to be protected
34

35 *Chapter 18 Future Land Use Plan:*

36 Page 18-3: Coastal Scenic: (Includes the CR District) “These transitional areas are only
37 moderately developed at present. Additional development may be possible in these areas, but
38 should be at densities, and should be of such a design, that will preserve the existing character of
39 rolling terrain; interspersed woods, fields, and structures; and views of the water. Suburban-style
40 subdivisions generally would violate this character.”

- 41 ➤ To argue that you can put in 6 or 8 houses and preserve vistas violates this provision
42

43 Page 18-8: Coastal Scenic: This section was also cited by Mr. Manahan:

44 “Two transitional areas have been identified as coastal scenic: ...

45 (2) Bay View/Chestnut: This is a moderately developed, waterfront area that runs from
46 Penobscot Street to the Rockport town line. For the most part, the area is not served by public
47 sewer...Permitted uses should include single and two family dwellings, some light commercial

1 activity such as nursery schools and daycare centers and some recreational activities such as golf
2 courses

- 3 ➤ The Residential Treatment Facility will have 12 – 14 beds. Compare that to a nursery
4 school that has 20 kids dropped off every morning, picked up every night – think of the
5 traffic that will generate as opposed to this rehab center where the residents who are there
6 can't even have cars
- 7 ➤ It is reasonable for the Town Meeting to determine that this facility, with the limitations
8 built into it is a light commercial activity that will fit into the location as described; a
9 court will not second-guess that

10
11 *Chapter 17 Goals, Policies & Implementation*

12 Page 17-3: Local Economy “Local Goal: To encourage traditional forms of livelihood,
13 including the full range of economic opportunity: from manufacturing and resource production to
14 professional occupations...”

- 15 ➤ This is what this Special Exception would provide – there is no question it meets the
16 goal

17
18 Page 17-4: 2. “Commercial districts should generally hold to present zoning boundaries,
19 however, the Town should consider opportunities for new commercial areas where appropriate.”
20 Mr. Goodall stressed that this is a big “however” and it is the Town Meeting who decides what is
21 appropriate. “Performance standards would be an effective tool to integrate these uses within
22 the community while buffering the impact.”

- 23 ➤ This is the reason that the Applicants included so many performance standards in the
24 Special Exception, and that makes it consistent with the Plan.

25
26 Page 17-17: Land Use Patterns: The goal is to prevent suburban sprawl.

- 27 ➤ There will be no subdivisions at this location

28
29 Page 17-20: Land Use Patterns: 8. To preserve the character and continuity of local traditions,
30 the Town should encourage active public uses and institutions, especially those already located
31 in historic buildings, to remain in their present buildings. The Town should encourage adaptive
32 reuse of existing structures before new construction.

33
34 Responding to Mr. Manahan’s suggestion that a rehab facility could be located in a new
35 building in the B-2 or B-3 District, Mr. Goodall suggested that they are instead encouraging an
36 institution that will be located in a historic building to remain there and adapting an existing
37 building to house that institution.

- 38 ➤ This is in compliance with the Comprehensive Plan; Mr. Manahan’s suggestion is not
39

40 ✓ ***Based on these sections of the Comprehensive Plan, it would be reasonable for a legislative
41 body to conclude that this amendment is consistent with the Comprehensive Plan.***

42
43 *Spot Zoning*

- 44
45 • This is not Spot Zoning: Spot Zoning, under Maine Law, is not illegal. This is a neutral term,
46 and the courts have made it clear that it is *not* illegal spot zoning to zone a single parcel of
47 land, or area, as long as it passes a two-part test: 1) It is not being done solely for the benefit

1 of the owner or a special interested party – here the court also looks to see if there will be any
2 public benefit arising from the change; and 2) It is consistent with the Comprehensive Plan.
3

4 ✓ ***Because the Amendment passes these Statutory tests it voids the charge of Spot Zoning.***
5

6 *Closing*
7

8 The Applicants ask that the Planning Board pass on to the Board of Selectmen this
9 proposed Rezoning Amendment, and have it eventually go to the Legislative Body so they can
10 do their work and decide whether it is consistent, and whether it is appropriate.
11

12 *Rebuttal*

13 Mr. Manahan:

14 He again challenged Mr. Goodall’s assertion that this use is not allowed in the B-2 and B-
15 3 Districts as a Hospital and repeated his earlier argument that the facility meets all parts of the
16 Definition.

17 ➤ To assert that Camden does not allow this at all, when it meets this definition, does not
18 pass the straight face test
19

- 20 • The facility would also fit within the definitions for Nursing or Convalescent Homes: “A
21 facility in which nursing care and medical services are performed under the general
22 direction of persons licensed to practice medicine in the State of Maine for the
23 accommodation of convalescent or other persons who are not in need of hospital care, but
24 who do require, on a 24-hour basis, nursing care and related medical services.”

25 ➤ There will be nursing care and medical services and the facility will be licensed
26

- 27 • Even if it doesn’t fit the definition of Hospital, it will fit that for a Nursing Home or
28 Convalescent Home, and there is no question that the use is allowed in two Districts within
29 Town

30 ➤ The assertion that F.H.R.E. can sue the Town because this use is not allowed does not
31 pass the straight face test, and the use does not have to be allowed in a residential district
32

- 33 • The Transitional Areas in the Comp Plan are meant to address the transition from the
34 Village District to the Transitional District, but it is still one of the residential
35 neighborhoods the Plan intends to protect. The transition to commercial is intended to
36 address the existing grandfathered commercial businesses that exist in the CR District.

37 ➤ The CR District is a residential district; the full force of the protections provided by the
38 Comp Plan apply here

39 ➤ This is a commercial use and the Plan does not provide for it in a residential district
40

41 Mr. Manahan referenced Mr. Goodall’s reference to Chapter 17 in his argument that
42 preservation through the adaptive reuse of Borden Cottage was encouraged by the Plan. Mr.
43 Manahan cites the Chapter further on:

44 Chapter 17 Page 35: “Amendments to the existing Zoning Ordinance...should be developed to
45 assure the protection of those historic areas and buildings deemed significant. Mechanisms that
46 should be considered for inclusion in such an ordinance include:

1 (b) Preference for retention of existing uses before adaptive reuse of existing structures,
2 and for adaptive reuse before replacement of existing buildings by new structures...”

- 3 ➤ Retaining the existing use is ranked before adaptive reuse within the Plan
4

5 Mr. Goodall:

6
7 He challenged Mr. Manahan’s classification of the rehab facility as a Hospital saying that
8 patients who need medical care in a Hospital will be taken to Pen Bay Hospital. This facility will
9 not be licensed as a Hospital because it is not a Hospital
10

11 With regard to Mr. Manahan’s statement regarding the Plan’s preference for retaining the
12 existing use of Historic properties over adaptive reuse and saying the use should remain
13 residential. Mr. Goodall asserted that Fox Hill cannot be considered a residential use, and that the
14 Board, or the Legislative Body, can easily reach the conclusion that it is not a residential use: It
15 is too expansive; there are too many structures; and there are too many accessory uses to
16 consider it a residential use for single family activity.
17

18 QUESTIONS from the BOARD:

19
20 Mr. Bernhard: He hopes that Mr. Kelly will prepare an overview of the Attorney’s presentation
21 to help them sort out the confusing information and help members know what they should
22 consider from each Attorney.
23

24 Mr. Bernhard’s concerns continue regarding the lack of impartial information on the
25 status of Fox Hill as a residence: He has asked for information on the 63 building permits that
26 were issued but hasn’t heard any answers; and he wants to know for certain whether or not Fox
27 Hill is able to be sold as a single family residence.
28

29 Mr. Wilson replied: The permits were issued for residential accessory structures. Even with
30 offices, the property would not fall into the commercial category until the property is used for
31 commercial purposes. He also read from the Ordinance saying that any property with a mix of
32 residential and non-residential uses is considered residential in use. That, coupled with the fact
33 that no money was changing hands, there was no advertisement, and no rooms were being let
34 out, and that it was a multi-family property with several dwelling units – nothing crossed the line
35 into commercial.
36

37 Mr. Bernhard wonders what happened that, according to Mr. Goodall, it cannot be
38 considered a residential use at this time. Mr. Wilson replied that the Town taxes the property as
39 a residential use as it always has.
40

41 Mr. Scholz: He questioned Mr. Goodall’s continued reference to the Legislative Body of
42 Camden and the role they play in approving this amendment. Does he mean to suggest that the
43 Planning Board has no role? Mr. Goodall seems to be saying that the Board should
44 automatically approve the proposal and forward it on to the people of Camden, instead of
45 following the Board’s charge to either recommend or not recommend the proposal.
46

1 Mr. Goodall: The Planning Board does play an important role: they make a recommendation on
2 the request for an amendment; they guarantee opportunities for increased public participation;
3 and their meetings are where the record is established regarding whether the proposal is
4 consistent with the Plan – they are the first line of defense of the Plan regarding consistency.
5

6 Mr. Householder: His comments and questions regarding the definitions submitted with the
7 proposal went to Paul Gibbons, Co-Counsel for the Applicants:

- 8 • The definitions, such as the one for Outpatient Care, are too specific to this Application,
9 and should be made more general to conform to the style of the Ordinance
- 10
- 11 • The definition of “Operator of a Private Residential Treatment Facility” which says that
12 the Operator must be a hospital –is not clear whether the facility must be a Hospital or
13 that a Hospital must run a facility that is not a hospital
- 14
- 15 • In the definition of Private Residential Facility, Mr. Gibbons uses the term “clients”; in
16 the definition of Outpatient facility he uses the term “patients”. Mr. Householder suggests
17 the terms should be consistent across definitions
- 18

19 He asked Mr. Gibbons if they considered the facility they would be operating a medical
20 facility; the Applicants replied they do not. He asked if the staff at the facility would be
21 dispensing drugs; Dr. Levendusky, representing McLean Hospital, the potential operator of the
22 facility, answered that the staff acts in a supervisory situation with regard to the taking of
23 medication by patients – they do not dispense the drugs.
24

25 Matt Manahan interjected, saying that Mr. Householder’s point was exactly right. The
26 Applicant’s own definition of the facility undermines their argument that this is not a Hospital;
27 the definition says that the Operator of the Facility must be a Hospital that is accredited by the
28 Joint Commission...”
29

30 Paul Gibbons: They are not a Hospital, and they do not meet the definition of a Hospital. The
31 reason the language is there is because they wanted to set the highest standard for an Operator to
32 ensure the best treatment for the clients. That standard is certification by the Joint Commission,
33 and to meet the standards set by the Joint Commission, the Operator must be a Hospital.
34

35 Dr. Levendusky: McLean Hospital is obviously a hospital, and they offer different levels of
36 care; this is a residential program that will be operated by McLean but the facility itself will not
37 be a hospital. It does not meet the requirements for a hospital; it is not licensed as a hospital; but,
38 it will be licensed by the State of Maine as a Residential Treatment Facility. McLean Hospital
39 operates schools, but the schools are not a Hospital; and they operate a day-care center, but that
40 doesn’t make the day-care center a Hospital. This facility will be a Residential Treatment
41 Facility, not a hospital.
42

43 Mr. Householder returned to his position that the definitions need more clarity.
44 Dr. Levendusky noted that the “Joint Commission” language in the Definition actually comes
45 from the State of Maine’s regulations on residential care. The Statute says that facilities that are
46 not certified by the Joint Commission must meet a different set of standards to prove their

1 abilities; if a facility is run by a Hospital that is accredited, it is deemed to be responsible for
2 running a residential care facility. He suggested that the Applicants can clarify the language.
3

4 Mr. Kelly believes the differentiation between the hospital as an operator, and the use
5 called a Hospital, is important to distinguish in the definition. He recommended saying” The
6 operator of the facility must be an “accredited Hospital”, or something similar that will avoid the
7 confusion.
8

9 Ms. MacKinnon asked for clarification between the terms “patients” and “clients.” Dr.
10 Levendusky said McLean uses the term “patient” to refer to those being treated as in-patients in
11 the Hospital; and in the residential settings they are referred to as either residents or clients. That
12 is the reason the different terms were used in the proposal.
13

14 Mr. Manahan responded to this discussion by saying it became important for the
15 Applicants to make this distinction when they realized that they had called themselves a
16 “Hospital” with “patients” in the original definition. They realized that meant that the facility
17 *was* allowed in the B-2 and B-3 Districts, and that they wouldn’t be able to sue the Town for
18 refusing to let them locate here; now they changed their proposal and their definitions.
19

20 Mr. Gibbons returned to reiterate the importance of the language in their definitions to
21 guaranteeing that the operator would be held to the highest standard – that is why they changed
22 the definition. Mr. Manahan’s argument that the standard for an operator was changed for any
23 other reason is artificial; requiring that the operator is a Hospital does not make the facility a
24 Hospital. The Board discussed changes to the language that would make the distinction between
25 “Hospital” as a use as defined by the Ordinance, and hospital as an “institution”. Although he
26 agreed that they could change the definition, Mr. Gibbons defended the current language saying
27 it was purposeful – they want to match the language with Maine’s Statutes.
28
29

30 **Comments from the Public**

31
32 Phil Montgomery: Has lived near other rehab centers and traffic is not a problem; if this facility
33 can save one out of the twelve patients who stay there, everyone is a winner because recovery
34 helps more than just the addict – it is widespread. He thinks the Town should not lose the
35 opportunity to provide a place where people can recover their lives.
36

37 Des Fitzgerald: Supports the proposal. As is a direct abutter, this is very material because it
38 comes at the time he is selling his home. He and his wife spoke at length to the Town
39 Administrator in Princeton, Massachusetts, where McLean Hospital operates Fernside – the
40 closest example he can imagine happening at Fox Hill. None of the concerns residents there
41 expressed - lots of traffic, a rise in drug-related crimes, plummeting real estate values, and
42 paparazzi – ever materialized. The Fitzgeralds were surprised to learn that no-one else from
43 Camden had called to make inquiries, and highly recommend that anyone with questions or
44 concerns give folks in Princeton a call.
45

46 Dan Demensch: He has been professionally involved locally in the recovery community for
47 many years, but is not connected to Fox Hill: He was service programs coordinator for

1 Community Alcoholism Services; he wrote the policy and procedures and obtained first-in-the-
2 nation national credentials for Maine's community rehab facilities - these credentials require that
3 you do service to that community; and he was founder and Executive Director of the Mid-Coast
4 Substance Abuse Council. The groundswell of support for substance abuse awareness and
5 treatment programs in this area resulted in a program so successful that it became the model for
6 other community facilities across New England. Many professionals in the area will be active in
7 seeking access to McLean's staff for help with local problems. Changing the addiction culture is
8 difficult, but if McLean's proposal is approved it will be a signal of hope for change in this
9 community.

10
11 Anita Brosius-Scott: In favor of the proposal and to the issue of changing zoning; sees Zoning
12 Ordinances as providing guidelines to create the environment around communities, not as a set
13 of immutable rules; the Ordinance cannot address the specifics of every proposal, so the capacity
14 for allowing changes to be made in a thoughtful way has been written into the rules. It is well
15 within the rights of property owners to ask for change when it benefits the entire town, and she
16 supports looking at every opportunity to create jobs and employment.

17
18 With regard to retaining the current use before adaptive re-use, she finds it difficult to
19 imagine this property ever being a single family residence again – it is not a family residence
20 type of place any more. It is very private and neighbors are not threatened by activities that take
21 place there. If you logically consider what the best use for this property would be, then it is
22 obvious that Fox Hill is well-suited to this proposed use, especially given the alternative of as
23 many as 13 homes or 15 time share/condos.

24
25 David Nobel: Hosted his daughter's wedding and huge reception on the property which went
26 well into the night -- the residence is very remote from the neighbors and they heard no
27 complaints. That event involved a great deal more traffic and noise than will ever occur at the
28 facility.

29
30 Dave Waulk: The biggest argument against Fox Hill is that it allows a commercial use within a
31 residential neighborhood that will set a precedent and ruin the character of Camden. But many
32 residential neighborhoods in Camden have commercial uses mixed in – many of them in big, old
33 homes like the B&Bs on High Street, have been there for many years, and that hasn't hurt the
34 Town.

35
36 Carla Ferguson: If the Board allows this change all the old estates in Town will disappear and all
37 that history will be gone. She hopes there will be a way to keep the place as she knew it "when"
38 for history's sake. The jobs they promise won't go to people here. She is in favor of making
39 zoning changes, but the Board denied three B&B's the ability to change so they can keep their
40 businesses going and keep their families in this Town.

41
42 Mark Dierckes: Former construction project manager at Fox Hill knows how perfectly suited this
43 place is for this purpose. At \$1700/day people come here for a life-changing event and may
44 attach themselves to the area if that happens. Regarding other permitted uses: A nursery school
45 would have much more traffic than this use; the only economic impact from building houses on
46 the property will be during construction and that is not on-going. Adaptive re-use: Anyone in the
47 industry will agree that if the place is adapted to a new use, it would go from commercial back to

1 residential; the use at Fox Hill for the 20 years he has been here has been commercial in nature;
2 and the combination of the amount of commercial grade construction in a residential setting
3 makes it perfect for the rehab center.
4

5 Leslie Tranchell: She was the listing broker for Fox Hill. In the many years it has been for sale it
6 has always been shown as a residence; she had one contract, but they, like everyone else, decided
7 it was too much property and too much of a project. People weren't interested in the many
8 amenities there, and the buildings weren't conducive to a family residence. The previous owner,
9 Matt Simmons, did not have plans to use the property as a residence.
10

11 Paul Kemberling: He has seen all the negative comments asking the Board not to send this
12 proposal forward and encourages the Board to move it to the Select Board – he wants to be able
13 to vote.
14

15 No one else came forward and the public comment portion of the meeting was closed.
16
17

18 **Comments from the Board**

19

20 Members agreed that much new and informative information was presented this evening.
21 Mr. Sargent found it very helpful to have the information and discussion more narrowly focused
22 on the issues they must decide - whether the use is appropriate and whether the amendment is in
23 compliance with the Comprehensive Plan – rather than what will go on at the facility.
24
25

26 **4. The Process – What Comes Next:**

27

28 Mr. Sargent asked the Applicants and Mr. Manahan if either of them have more
29 information they wish to present:
30

31 Attorney Gibbons replied that the Applicant will consider making minor changes to the
32 language before the Public Hearing, but that they had nothing else they wanted to submit. Matt
33 Manahan responded by saying that the Applicant has been given many opportunities to work on
34 the language. There should be no more changes allowed, and this is the language they should
35 send to hearing.
36

37 Mr. Scholz asked when the language was tweaked this time the Applicants would
38 acknowledge to the Board that this is the amendment they want to be heard so the Board can take
39 the next step. Mr. Gibbons said they would.
40

41 Mr. Sargent described the Public Hearing process if the Board decides to move forward:
42 Following presentations from attorneys and comments at the public at the first hearing, the Board
43 will decide whether or not to request additional changes to the language. Following the second
44 hearing the Board typically votes on whether or not to send the amendment to the Select Board.
45 The Select Board typically holds at least one Public Hearing, but they could chose to gather more
46 information and hold additional hearings before determining whether or not to include the item
47 on the Town Warrant for a vote in June.

1
2 Mr. Sargent noted the next step is to determine whether the amendment is ready to go to
3 Public Hearing, and he asked the Applicant whether or not they are at that point. Mr. Gibbons
4 replied that they are ready to proceed to hearing. Mr. Sargent then polled the Board:
5

6 Mr. Scholz believes that the Board has sufficient information to proceed, and if the Board
7 is happy with the revised language, they should move forward to a hearing; Mr. Bernhard wants
8 to hear more from the neighbors, and still has many unanswered questions regarding why the
9 property can or cannot be sold as residential property. He would like to hear from an uninterested
10 professional in this regard because it is important in determining whether or not this intended use
11 is in the spirit of that community; Ms. MacKinnon wants to have a Board discussion regarding
12 Comp Plan consistency at some point. She has no other concerns that require more information
13 and is ready to move forward; Mr. Householder suggests they have a Public Hearing at the
14 earliest opportunity which is November 21; Mr. Scholz would like the opportunity to discuss the
15 proposal with other Board members – a chance to ask questions and hear arguments.
16

17 Mr. Sargent replied that what each member thinks regarding the proposal is not relevant
18 at this time – they should not have made up their minds how they will be voting at this point in
19 the process. Right now they need to reach a consensus on whether or not they are ready to hold a
20 Public Hearing.
21

22 Mr. Kelly reminded the Board that Board members do not have a due diligence
23 requirement to obtain information, and cannot go out and gather information on their own – they
24 must rely only on the information presented to them at Public Hearings. Mr. Bernhard has made
25 his point clear that it is important to him to have more information, and the Applicants have
26 heard that request – perhaps they will provide more information on this subject at the Public
27 Hearing. Once all the information has been gathered and the Public Hearing closed, the Board
28 can deliberate and hold the discussion Mr. Scholz has requested.
29

30 Mr. Kelly also noted that any last minute language changes must be made before the
31 hearing is advertised; Mr. Wilson will inform the parties of the deadline for making further
32 changes.
33

34 The Board scheduled a Public Hearing on the Fox Hill amendment request for 5 pm on
35 November 21 in the Opera House.
36
37

38 **5. Discussion:**

39
40 1. Minor Field Adjustment: There were none

41
42 2. Future Meetings:

43
44 10/24: Vangle Subdivision Application has been withdrawn – meeting canceled

45
46 11/07: Vangle Private Way Application and Private Pier Application
47

1 11/21 and 12/07: Fox Hill Public Hearings

2

3 3. There are no pending applications

4

5 4. Other:

6 Comp Plan Meeting will be held 11/07 – Chapters 10, 12 and 15 will be on the agenda.

7

8 The CEO reported that Mid-Coast Regional Planning Commission received grant funding to
9 gather demographic information and prepare maps for the Plan.

10

11 There being no further business before the Board they adjourned at 9:15 pm

12

13

14 Respectfully submitted,

15

16 Jeanne Hollingsworth, Recording Secretary