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September 4, 2024

Bar Harbor Board of Appeals
Town of Bar Harbor
93 Cottage Street
Bar Harbor ME 04609

Re: Application for Administrative Appeal regarding Notice of Violation issued to Golden Anchor L.C. on August 5, 2024.

Dear Members of the Board:

Enclosed please find the Application for Administrative Appeal of Golden Anchor L.C., together with Letter of Authorization signed by Richard Ade, Manager of Golden Anchor L.C. and our firm's check in the amount of \$1,500 for the filing fee in this matter and the exhibits required by the Application Form and Section 125-103(c) of the Land Use Ordinance. In filing this appeal necessitated by a Notice of Violation ("NOV") issued for alleged violations under Chapter 52 and the Bar Harbor Land Use Ordinance ("LUO") by the Code Enforcement Officer ("CEO") on August 5, 2024, we have timely appealed the CEO's NOV.

The NOV improperly asserts that, notwithstanding prior permits issued by the Town with a site plan approval by the Planning Board and a Wharves and Weirs Act Permit issued by the Town Council for marina and cruise ship disembarkations, Golden Anchor was somehow required to file for new permits. The challenged Chapter 52 provisions mandate those new permits under the new Chapter 52 ("Disembarkation Ordinance") adopted by the Bar Harbor Town Council on June 18, 2024.

Through counsel, Golden Anchor L.C. and B.H. Piers, L.L.C. made timely prior objections to the authority of the Town Council to adopt Chapter 52 under the Town's Charter and Section 125-9(E) of the LUO; both the Charter and 125-9(E) require that voters only amend substantive provisions of the LUO. Those prior objections (including challenges to the constitutional validity of the proposed Chapter 52 provisions) were filed by letters to the Town Manager and Town Council dated May 7, May 21, June 18, and June 21, 2024.

In the context of this Administrative Appeal, Golden Anchor L.C. is required to challenge the claim by the CEO's NOV issued under Chapter 125 and Chapter 52 in order to preserve its rights. Appellant Golden Anchor challenges the CEO's claim that the NOV could have been based, in any part, on Chapter 125 since the violations asserted flow only from the new requirements of Chapter 52.

Accordingly, in conjunction with this Administrative Appeal, Golden Anchor L.C. gives notice to the Board and its counsel of the following jurisdictional challenges:

1. As detailed in this letter and the Administrative Appeal, Golden Anchor challenges that the NOV could, in any way, assert that the NOV was based, in any substantive way, on Chapter 125. The asserted violations in the NOV arose strictly under Chapter 52 as the NOV details. Chapter 52 is not a part of the LUO set forth in Chapter 125. The Appellant disputes the CEO's claim that the NOV can, in any way, be based on Chapter 125 or Section 125-77(H) given the text of Chapter 52 and the asserted violations in the NOV which arise strictly under Chapter 52.
2. Because the asserted violations arise only under Chapter 52 and the Board's jurisdiction to hear appeals is tied to Chapter 125 under Section 125-103(A), the Appellant requests that, at the appropriate time, the Board determine whether it has authority to hear the appeal of the NOV arising under Chapter 52.
3. On August 27, 2024, the Town Council approved and placed on the warrant for action by the Bar Harbor voters on November 5, 2024, a proposed Chapter 50 to address Cruise Ship Disembarkations. Likewise, on August 27, 2024, the Town Council repealed Chapter 52 conditioned on voter approval of the repeal of Section 125-77(H) and its replacement by Chapter 50.

In light of the proposed law change, referred to in paragraph number 3 above, the Board may wish to consider deferring action on this appeal until after November 5, 2024.

The Appellant has copied Attorney Daniel Pileggi (counsel to the Board) so that the Board Chair and Attorney Pileggi can respond to the request of Appellant under 125-103(d)(2) to hold any hearing on this appeal after November 5, 2024, and to set the submittal deadlines under 125-103 in accordance with that deferred schedule.

Respectfully submitted,

s/ Andrew Hamilton

P. Andrew Hamilton

cc: Daniel Pileggi, Esq.



BAR HARBOR BOARD OF APPEALS
APPLICATION FOR ADMINISTRATIVE APPEAL
(as permitted in Section 125-103 of the Bar Harbor Land Use Ordinance)

APPLICATION # _____ **DATE** September 4, 2024

FEE \$ 1500.00 **MAP** 104 **LOT** 010-000

APPLICANT:

Name Golden Anchor, L.C.

Address 1000 Market Street, Suite 300
Portsmouth, NH 03801

Telephone _____

Email _____

OWNER:

Name Golden Anchor, L.C. (Manager, Richard Ade)

Address 1000 Market Street, Building 1, Suite 300
Portsmouth, NH 03801

Telephone 603-436-0833

Email rich.ade@oceanprop.com

PROJECT REPRESENTATIVES:

Name P. Andrew Hamilton and Timothy Woodcock

Address 80 Exchange Street - PO Box 1210
Bangor, Me 04402

Telephone 207-992-4332

Email ahamilton@eatonpeabody.com



BAR HARBOR BOARD OF APPEALS
APPLICATION FOR ADMINISTRATIVE APPEAL
(as permitted in Section 125-103 of the Bar Harbor Land Use Ordinance)

SUBJECT PROPERTY

Physical Location 55 West Street, Bar Harbor, Me

Zoning District Shoreland General Development

Tax Map and Lot Number Map 104, Lot 010-000

Please state the basis for your contention that you are an aggrieved party as defined in §125-109 of the Bar Harbor Land Use Ordinance:

As owner of the referenced property subject to the Notice of Violation issued on August 5, 2024 by Code Enforcement Officer, Angela Chamberlain under Chapter 52 and Chapter 125, the Golden Anchor L.C. is the aggrieved party as defined in Section 125-109.

Decision maker being appealed:

- Code Enforcement Officer
- Planning Board
- Harbormaster
- Public Works Director
- Other (specify) Town Council



BAR HARBOR BOARD OF APPEALS
APPLICATION FOR ADMINISTRATIVE APPEAL
(as permitted in Section 125-103 of the Bar Harbor Land Use Ordinance)

Grounds for action being appealed:

- Failure to approve or deny an application within the time limits of the Bar Harbor Land Use Ordinance
- Denial of approval based on a misinterpretation or misapplication of the Bar Harbor Land Use Ordinance
- Granting of approval based on a misinterpretation of or misapplication of the Bar Harbor Land Use Ordinance
- Factual findings clearly unsupported by evidence
- Other (please specify) See Cover letter, Application, and Exhibits attached hereto

Please state the specific decision you are appealing (attach copy) and the action you are requesting from the Board of Appeals:

Appellant is appealing the Notice of Violation issued by Code Enforcement Office on August 5, 2024. Appellant requests that the Board of Appeals reverse the action of the Code Enforcement Office in issuing the Notice of Violation for the reasons stated herein and the Exhibits attached hereto.

Please state the provisions of the Bar Harbor Land Use Ordinance at issue with specific references to the applicable sections of the LUO:

The Code Enforcement Officer's Notice of Violation is based on Chapter 52. Chapter 52 is not part of Chapter 125. The Appellant disputes the CEO's claim that the Notice of Violation can in any way be validly based on Chapter 125 (Land Use Ordinance).

Please state any time limits with which the Code Enforcement Officer or Planning Board has not complied, citing the applicable section of the LUO and dates:

Not Applicable



BAR HARBOR BOARD OF APPEALS
APPLICATION FOR ADMINISTRATIVE APPEAL
(as permitted in Section 125-103 of the Bar Harbor Land Use Ordinance)

Please clearly state the specific manner in which you believe the Bar Harbor Land Use Ordinance has been misinterpreted or misapplied and include specific references to the applicable sections of the LUO (use additional sheets if necessary):

Chapter 52, on which the Notice of Violation is based, is not part of the Land Use Ordinance. Appellant asserts that the Town Council's adoption of Chapter 52 has superseded and rendered null and void Section 125-77(H). Therefore, it was erroneous for the Code Enforcement Officer to assert that the Notice of Violation could, in any way, be based upon Chapter 125, Land Use Ordinance.

Please list every factual finding made by the Code Enforcement Officer or Planning Board that you believe to be unsupported by the evidence presented to that decision-maker and state clearly the basis of your contention that each finding was unsupported by evidence (use additional pages if necessary):

1. The Notice of Violation asserts that Appellant failed to apply for a permit as required by Chapter 52. However, Appellant already possesses valid permits previously issued by the Town (both Site Plan approval from the Planning Board and Wharves and Weirs Act approval from the Town Council) and Chapter 52 could not unilaterally void or materially alter those permits.
2. The Code Enforcement Officer's finding that the Appellant violated Chapter 125 is unsupported by any factual findings and any proper conclusion of law.

Please set forth any other facts, laws or ordinance references that you believe support your appeal (attach additional sheets if necessary):

Appellant asserts that the Notice of Violation is unsupported by substantial evidence and the Notice of Violation and Chapter 52 are both in violation of multiple laws (including the Town Charter, and Sections 125-9(E) as well as Sections 125-77(H) and Section 125-109 "PERSON"), Maine Statutes and the Constitutions of Maine and the United States.



BAR HARBOR BOARD OF APPEALS
APPLICATION FOR ADMINISTRATIVE APPEAL

(as permitted in Section 125-103 of the Bar Harbor Land Use Ordinance)

Please attach the following:

- Your deed or other evidence of interest in the property and a letter of authorization signed by the owner of record permitting the application be made by and/or represented by another party;
- Copy of the decision you are contesting and copies of any written findings issued by the Planning Board, Design Review Board, or Code Enforcement Officer;
- All relevant submissions previously presented to the municipal officer or body whose decision is being appealed;
- A transcript of all proceedings before Planning Board or Design Review relevant to this appeal;
- Any other materials you believe will be of assistance to the Board of Appeals in rendering a decision;
- List of property owners within 300 feet of the subject property (to be provided by the Planning Department).

Submit 12 copies of the complete application with the supporting materials to the Planning Department if submitting for an appellate review hearing. Please supply 10 copies of the complete application with the supporting materials to the Planning Department if submitting for an evidentiary hearing. Applications and submissions must comply with §125-103 of the LUO. Please refer specifically to §125-103.C for provisions related to submissions.

CERTIFICATION:

This application and all information submitted herewith are true and correct to the best of my knowledge.

P. Andrew Hamilton Attorney for Golden Anchor L.C.

9/4/21

Applicant

Date

MISCELLANEOUS PAYMENT RECPT#: 569881
TOWN OF BAR HARBOR
93 COTTAGE STREET

BAR HARBOR, ME 04609

DATE: 09/04/24 TIME: 15:54:36
CLERK: tdesjardi DEPT:
CUSTOMER#:

PARCEL: APPEALS BOARD APPLIC

CHG: APPLBD APPEALS BOARD F 1500.00

AMOUNT PAID: 1500.00

PAID BY: EATON PEABODY
PAYMENT METH: CHECK
 103033

REFERENCE:

AMT TENDERED: 1500.00
AMT APPLIED: 1500.00
CHANGE: .00

Bar Harbor Board of Appeals

Rules of Procedure

Authority.

These Rules of Procedure are regulations adopted by the Bar Harbor Board of Appeals pursuant to 30-A MRSA § 3(C) and Bar Harbor Land Use Ordinance ("LUO") §125-103 (D)(1)(g). The Chair may waive any regulation in the Rules of Procedure upon good cause shown to the extent allowed by law.

Receipt of Documents.

The applicant will prepare and provide to the Planning Director 10 copies of the full application in binders with tabs, together with two copies of all large-format exhibits. Staff will date stamp all pages of each exhibit of the secure file copy "Received," so that they can later determine the last submitted version. Documents submitted by the appellee or other interested parties shall be treated similarly.

Submittal Deadlines.

By the appellant. To be placed on the agenda for the Board of Appeals, all application materials to be considered by the Board must be submitted by noon, 20 days prior to the meeting at which it is to be heard, (LUO §103 (C)(1(a)). This deadline shall apply to all applications including:

- Requests for Variances,
- Administrative Appeals,
- Relocation of Nonconforming Structures,
- Change of Nonconforming Use,
- Relocation of a Nonconforming Use, and
- Change of Nonconforming Use in a Shoreland District.

A complete application shall include the following: 1) an official application form provided by the Planning Department, 2) any supporting materials required by the Land Use Ordinance, and 3) any other materials the appellant wishes to submit in support of the appeal. In no case shall an application be placed on the agenda without all the application materials required by the Land Use Ordinance. Space on an agenda may not be reserved by telephone call, letter, or partial submission. New applications will be placed on the agenda on a first-come first-served basis.

As an exception to the 20-day deadline, a request for Reconsideration shall be subject to the timelines and requirements of Section 125-106.

By appellee and other interested parties. Pursuant to LUO §125-103 (C)(1)(b) for **appellant review hearings** interested parties must file 12 copies of their documents with the Planning Director no later than noon seven days prior to the public hearing. Pursuant to §125-103 (C)(2)(b) for **evidentiary hearings**, the appellee and other interested parties must file 12 copies or 10 copies, respectively, of their documents with the Planning Director no later than noon seven days prior to the public hearing.

By staff. Submittals by staff pursuant to LUO § 125-103 (D)(1)(j) are not subject to deadlines and may be submitted at any time.

Late Submittals.

Late submittals shall be accepted by the Planning Department but conspicuously marked "LATE" and dated. Unless the Board or Chair orders otherwise, late submittals shall not be considered by, or distributed to, the Board.

Continuances.

Requests for continuances must be filed in writing with the Planning Department with copies to all known interested parties within two business days of the date the requester first learned of the need for a continuance. The requester must make a good faith effort to contact other interested parties to find out if an interested party objects to the request for a continuance. The requester must inform the Planning Department whether –she/he knows the position of the other interested parties regarding the request for a continuance. The Chair may grant a request for a continuance if the other interested parties have affirmatively indicated that they do not object to a continuance. The Chair may grant a continuance over an objection or lack of affirmative consent only in extraordinary circumstances. Otherwise, the Board will rule on the request for a continuance to which there is an objection or lack of affirmative consent. All interested parties must be prepared to proceed with the hearing in the event the Board denies the request for a continuance even if the Board rules on the request for a continuance on the same night scheduled for the hearing.

Meeting Procedures.

The appellant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions by the parties may be asked through the Chair. All persons at the hearing shall abide by the order of the Chair. Members of the public may offer statements relevant to the project under consideration once the public comment portion of the meeting is opened. All speakers shall have a reasonable time to speak. The duration of each speaker's remarks shall be limited at the discretion of the Chair. All votes of the Board of Appeals must be by a majority of the five-member board, not a majority of the sitting quorum. No vote of fewer than three members voting either in the affirmative or negative is a valid vote. When a member is unable to act because of conflict of interest, physical incapacity, absence from the state, or any other reason satisfactory to the Chair, the Chair shall designate the alternate to act in his or her stead. The alternate is encouraged by the Board to attend and participate in all meetings of the Board. The alternate may vote only when he or she has been designated by the Chair to act for a member.

Appropriate Questions for Consideration.

The Board of Appeals will only consider questions based on the Bar Harbor Land-Use Ordinance and will not consider any other questions such as equitable estoppel, taking, and other issues beyond the Board's purview. The Board of Appeals cannot hear new evidence that is not already part of the record on appeal in an appellate review hearing.

The Written Decision.

Following the final vote on an appeal, staff shall prepare and submit to the Chair an initial written decision, which the Chair may revise so it accurately describes the reasons for the Board's decision. The revised decision shall then be circulated to the Board members who will communicate their approval to the Planning Department within 48 hours of receiving the draft

decision. Board members may deliberate on the substantive merits of the decision only at an open, public Board meeting. Board members may, however, point out typographical and grammatical errors in the decision and may indicate whether that Board member would like to schedule an open meeting to deliberate the merits of the written decision. Such request may be made in an email to the Planning Department. If a Board Member requests a meeting to discuss the substantive merits of the written decision, the Chair shall call such a meeting. The Chair may, also, on her/his own initiative schedule a special meeting to deliberate on the substantive merits of the written decision. If no meeting is called for and the Chair sees no reason to hold such a meeting, the Chair may sign the written decision on behalf of the Board. Whether or not there is a meeting to deliberate the written decision, a final version of the decision should be available to the appellant within ten working days following the Board meeting at which the decision was formed.

Requests for Reconsideration.

Applicant Request. Requests for reconsideration must be filed in writing within ten days of the Board's vote on the final decision. The written request for reconsideration must clearly explain both the grounds for reconsideration and why those grounds could not have been brought to the Board's attention during the hearing. Acceptable grounds for reconsideration are: 1) In appeals by evidentiary hearing, newly discovered evidence that could not have been discovered with due diligence before the evidentiary hearing; 2) recent changes in the law, such as statutory amendments or new case law that was unknown to the Board and the parties at the time of an appellate review or evidentiary hearing. Restating arguments or positions that were raised in the hearing but rejected by the Board does not constitute grounds for a reconsideration. If the request for reconsideration does not comply with the above requirements, the Chair may dismiss it without further hearing. If the request for reconsideration complies with the above requirements, the Board shall meet within 15 days to decide whether to reconsider its prior decision. If the Board decides to reconsider its prior decision, it shall set forth the procedures to be followed during the reconsideration.

Board Member Request. Any Board member who voted in the majority on the final decision may ask for a reconsideration of this decision. This request must be made to the Chair within two days of the original decision. This request will be granted automatically. A special meeting to reconsider will be scheduled no later than a week after the request. The Planning Department will notify all interested parties of the special meeting.

Public Review

It is very important for the public to be able to review pending Board of Appeals applications. Accordingly, the following procedure is established:

1. A full copy of one of the application binders, along with any large-format exhibits will be available to the general public for review in the Planning Department.
2. The other application binder and one copy of any large-format exhibits will be maintained in a secure file to which only staff has access. Members of the public wishing to review the secure copy must file a citizen's "right to know law" request as provided by state law and will be supervised by staff as they review the file. A record of public access requests granted will be maintained in the file.

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EXHIBITS

- A. Authorization Letter – Richard Ade
- B.1 Notice of Violation
- B.2 Violation Report
- B.3 Photographs
- B.4 Section 125-77(H)
- B.5 Chapter 52
- B.6 Cruise Ship Disembarkation Facility Permit Application
- B.7 Cruise Ship Disembarkation Permit Application

- C. Abutters List

- D. Deed

- E. Tax Card

- F. Letters to the Town
 - F.1 5/7/2024 Letter
 - F.2 5/21/2024 Letter
 - F.3 6/18/2024 Letter
 - F.4 6/21/2024 Letter

- G. Cover sheet of Maine Municipal Manual – Chapter 2 – Jurisdiction of the Appeals Board

AUTHORIZATION LETTER FROM RICHARD ADE

September 3, 2024

P. Andrew Hamilton, Esq.
Eaton Peabody
80 Exchange Street
Bangor, Me 04402-1210

Re: Golden Anchor L.C. Authorization to appeal Notice of Violation

Dear Andy:

I am writing to you in my capacity as the Manager of Golden Anchor L.C. I hereby authorize Eaton Peabody to file an Administrative Appeal of the Notice of Violation issued by the Code Enforcement Office of the Town of Bar Harbor against Golden Anchor L.C. on August 5, 2024. This authorization extends to all steps that may be necessary for Eaton Peabody to present that Appeal to the Board of Appeals in accordance with Section 125-103.

Kind Regards,

A handwritten signature in black ink, appearing to read 'Richard Ade', with a stylized flourish at the end.

Richard Ade

NOTICE OF VIOLATION

- B1. Notice of Violation**
- B2. Violation Report**
- B3. Photographs**
- B4. Section 125-77(H)**
- B5. Chapter 52**
- B6. Cruise Ship Disembarkation Facility Permit Application**
- B7. Cruise Ship Disembarkation Permit Application**

AUG 09 2024

TOWN OF BAR HARBOR
Code Enforcement Division

93 Cottage Street, Suite I
Bar Harbor, Maine 04609-1400
Tele. 207-288-3329 Fax 207-288-3032
E-Mail: ceo@barharbormaine.gov

Angela M Chamberlain

Code Enforcement Officer
Building Inspector
Electrical Inspector
Plumbing Inspector

August 5, 2024

Golden Anchor LC
1000 Market Street
Building One, Suite 300
Portsmouth, NH 03801

NOTICE OF VIOLATION

DELIVERED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

**55 West Street – NOTICE OF VIOLATION AND ORDER TO TAKE CORRECTIVE ACTION-
FAILURE TO SECURE NECESSARY PERMITS**

To Whom It May Concern:

The Town of Bar Harbor has determined that your use of the property located at 55 West Street, Bar Harbor, Maine, also known as Tax Map 101, Lot 010-000, (hereinafter the "Property"), is in violation of the Town's Cruise Ship Disembarkation Ordinance, which went into effect on July 18, 2024.

The Town's Cruise Ship Disembarkation Ordinance (hereinafter the "CSD Ordinance" and to be codified at Chapter 52)¹, which constitutes the rules necessary to implement Section 125-77H of the Land Use Ordinance, requires that a permit must be obtained from the Code Enforcement Officer ("CEO") for a Cruise Ship Disembarkation Facility prior to receiving any disembarking Persons from a cruise ship. This CSD Ordinance, a copy of which is attached, constitutes the rules anticipated by and necessary to enforce Section 125-77H of the Town Code.

Section 52-6 of the CSD Ordinance states as follows: "Permit Required: No person may allow or facilitate the disembarkation of Persons from a cruise ship over land or operate a CSDF without having first obtained a permit to operate a CSDF ("CSDF Permit")."

¹ This Chapter was enacted effective July 18, 2024. However, it has not yet been codified. A copy of the enacted but uncodified draft is attached.

Section 52-5 of the CSD Ordinance defines person as follows: ""Persons" means passengers of cruise ships and not those persons covered by 33 C.F.R. § 105.200 and 33 C.F.R. § 105.237 (titled "System for seafarers' access"), namely, "vessel personnel," "vessel crew," "seafarers assigned to a vessel," "pilots," and "representatives of seafarers' welfare and labor organizations" (collectively, "Crew"). The word "person" (i.e. not capitalized) shall have the meaning provided by § 125-108 of the Town Code."

Section 52-5 of the CSD Ordinance defines a Cruise Ship Disembarkation Facility ("CSDF") as follows: "a public or private property, or a public or private structure, used for disembarkation of persons arriving on land from cruise ships."

On or about July 25, 2024, it was observed that individuals meeting the definition of "Person" under the CSD Ordinance disembarked from a cruise ship on your Property without the property owner having first obtained a CSDF Permit as required by the Ordinance.

These actions are in violation of Chapter Section 52-6 of the CSD Ordinance and Section 125-77H of the Land Use Ordinance. Such violations are a nuisance in violation of Chapter 125-99. See Section 125-77H and 125-101B for possible maximum fines.

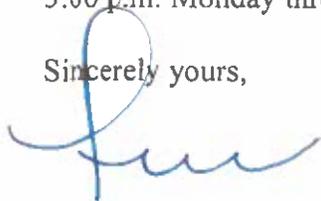
You are hereby ordered to take the following corrective action: within thirty (30) days from the date of this letter you must submit an application to allow for the disembarkation of individuals meeting the definition of Person under the CSD Ordinance. Failure to apply for the applicable permits within 30 days will result in further enforcement action.

In addition to the CSD Ordinance, I have included copies of Section 125-77H, the Cruise Ship Disembarkation Facility permit application, and the Cruise Ship Disembarkation permit application for your use.

Pursuant to Section 125-103, "the Board of Appeals may, upon written application of an aggrieved party received by the Planning Department within 30 days of any decision or enforcement action by a municipal body or official who or which interprets this chapter, hear appeals from such decision."

If you have any questions about this letter, please contact me at 207-288-3329 between the hours of 8:30 a.m. - 5:00 p.m. Monday through Friday.

Sincerely yours,



Angela M. Chamberlain
Code Enforcement Officer

Cc: Building Permit File
Eben Salvatore
P. Andrew Hamilton, Esq. ✓
Stephen Wagner, Esq.
Town Council Members
James Smith, Town Manager

**TOWN OF BAR HARBOR
Code Enforcement Division**

93 Cottage Street, Suite I
Bar Harbor, Maine 04609-1400
Tele. 207-288-3329 Fax 207-288-3032

VIOLATION REPORT

Tender Dock where the violation occurred:

55 West Street (Tax Map 101, Lot 010-000)

Property Owner:

Golden Anchor, LC

Property Owner Mailing Address:

1000 Market Street
Building One, Suite 300
Portsmouth, NH 03801

Date of Violation: July 25, 2024

Time: 10:30 am

Witnesses to the violation:

1. Angela Chamberlain, Code Enforcement Officer
2. Chris Wharff, Harbor Master
3. _____

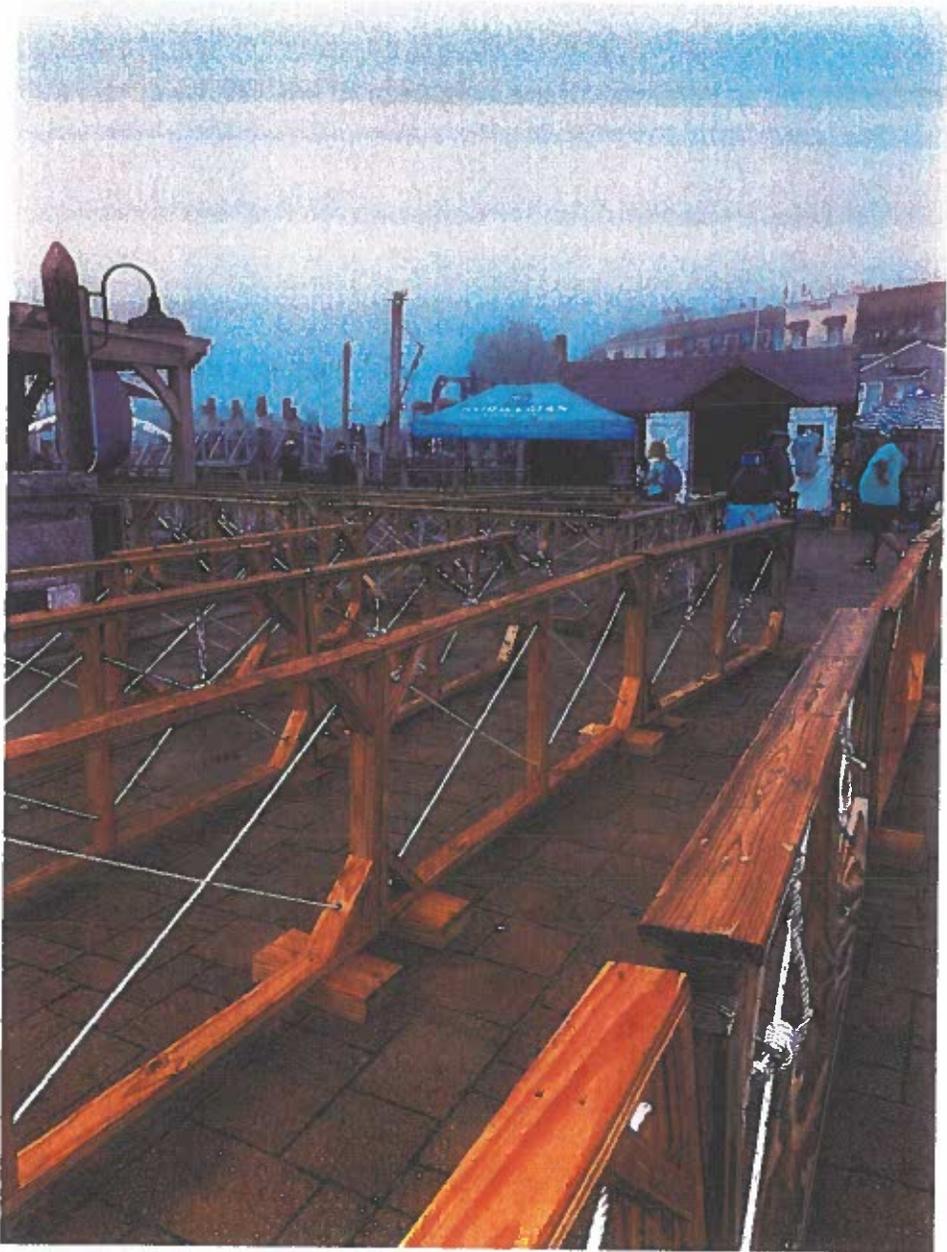
Number of Persons who disembarked over the limit: _____

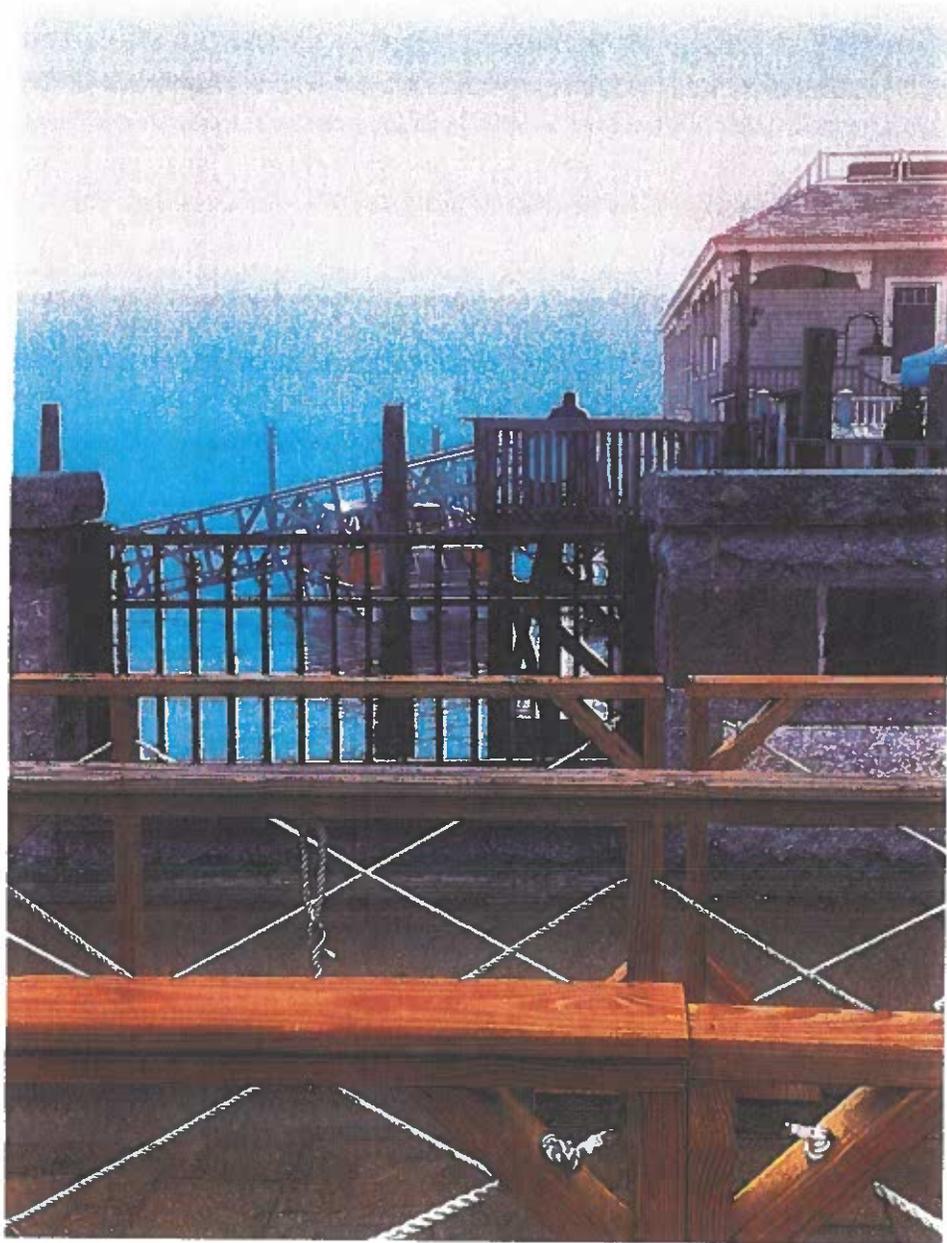
Other pertinent information:

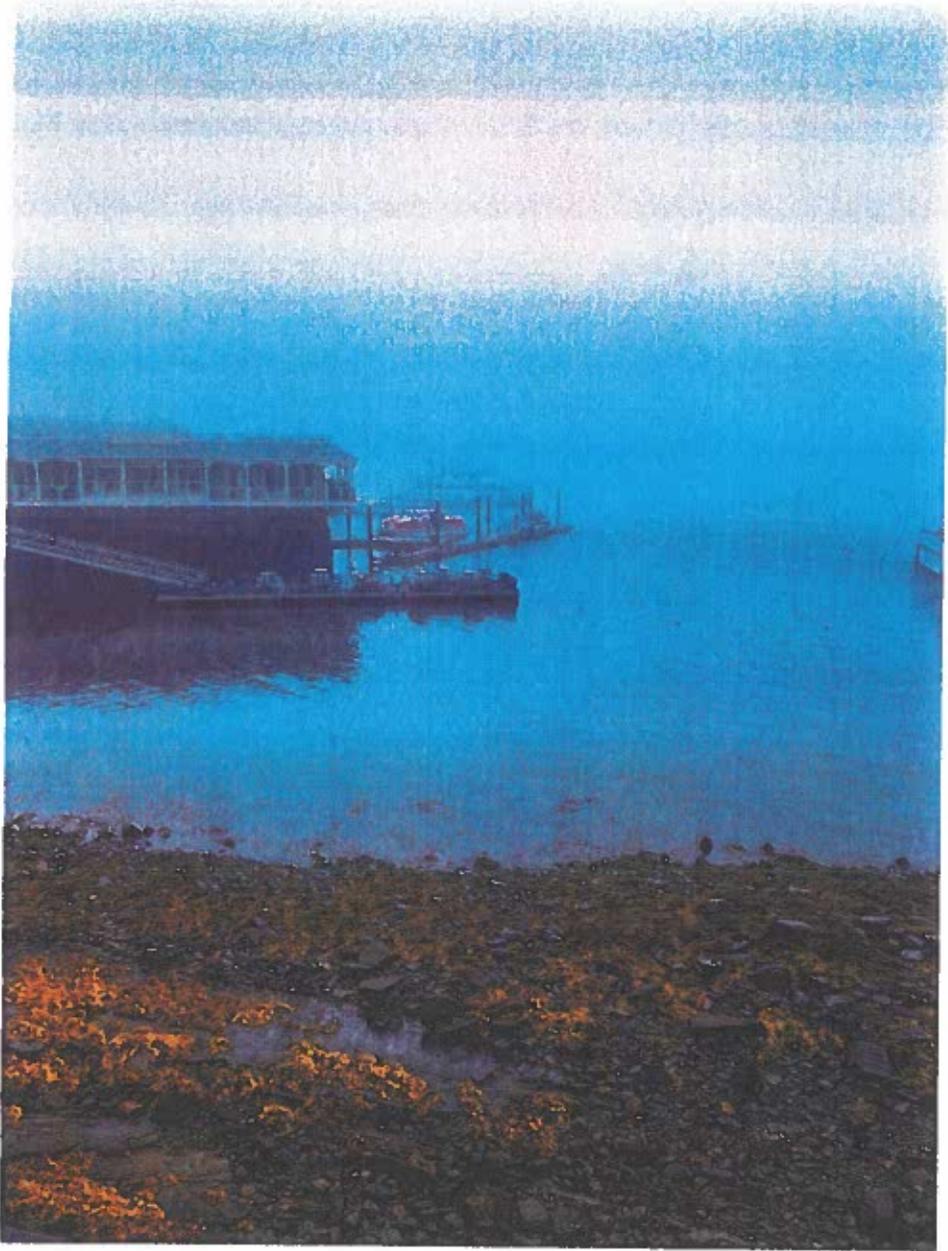
Tenders were arriving at the dock and we witnessed passengers being unloaded from the tenders onto the dock. Norwegian tents were set up on the site for the Norwegian GEM.

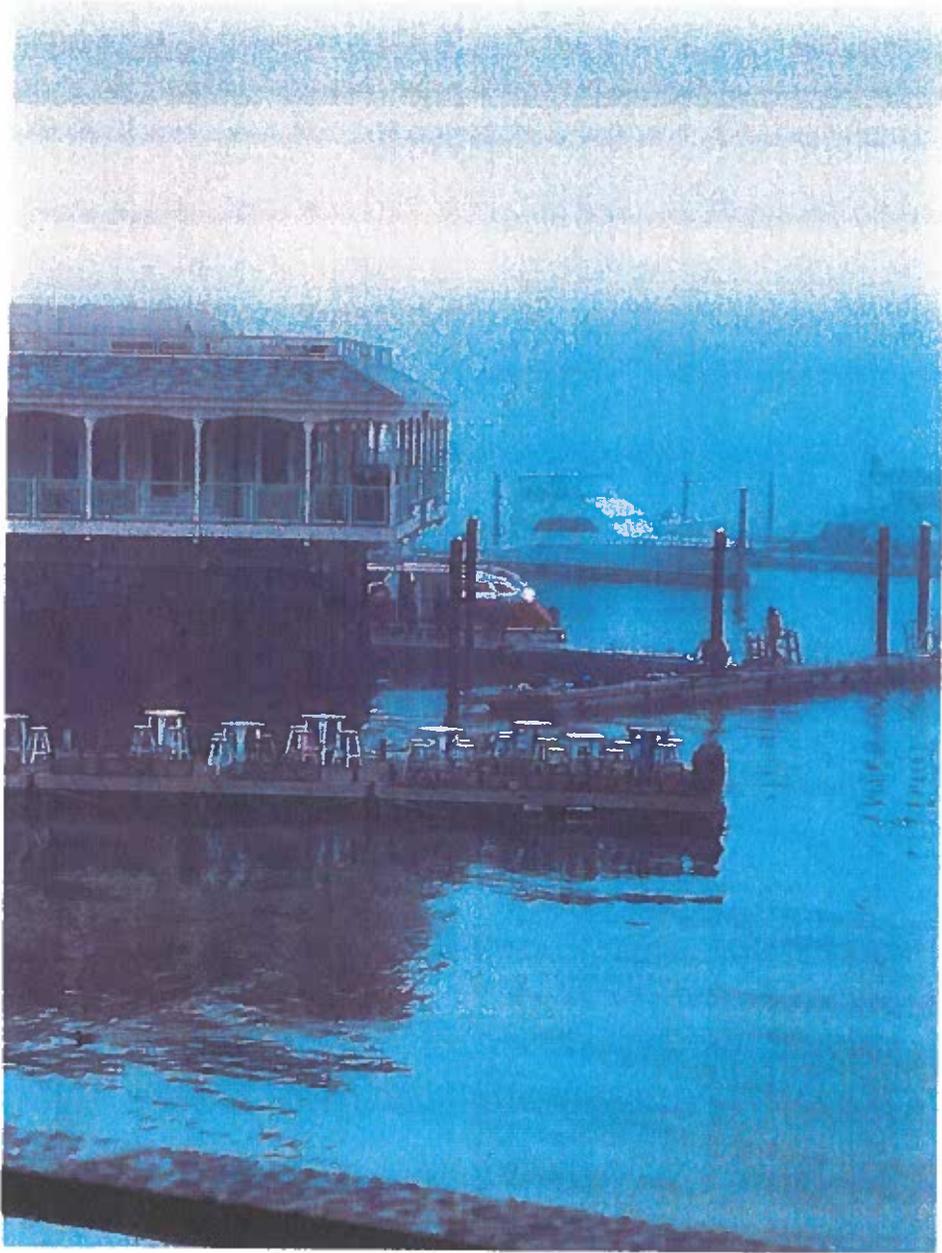
The Code Enforcement Department does not have any pending Cruise Ship Disembarkation Facility Permit or Cruise Ship Disembarkation Permit applications on file for this property.

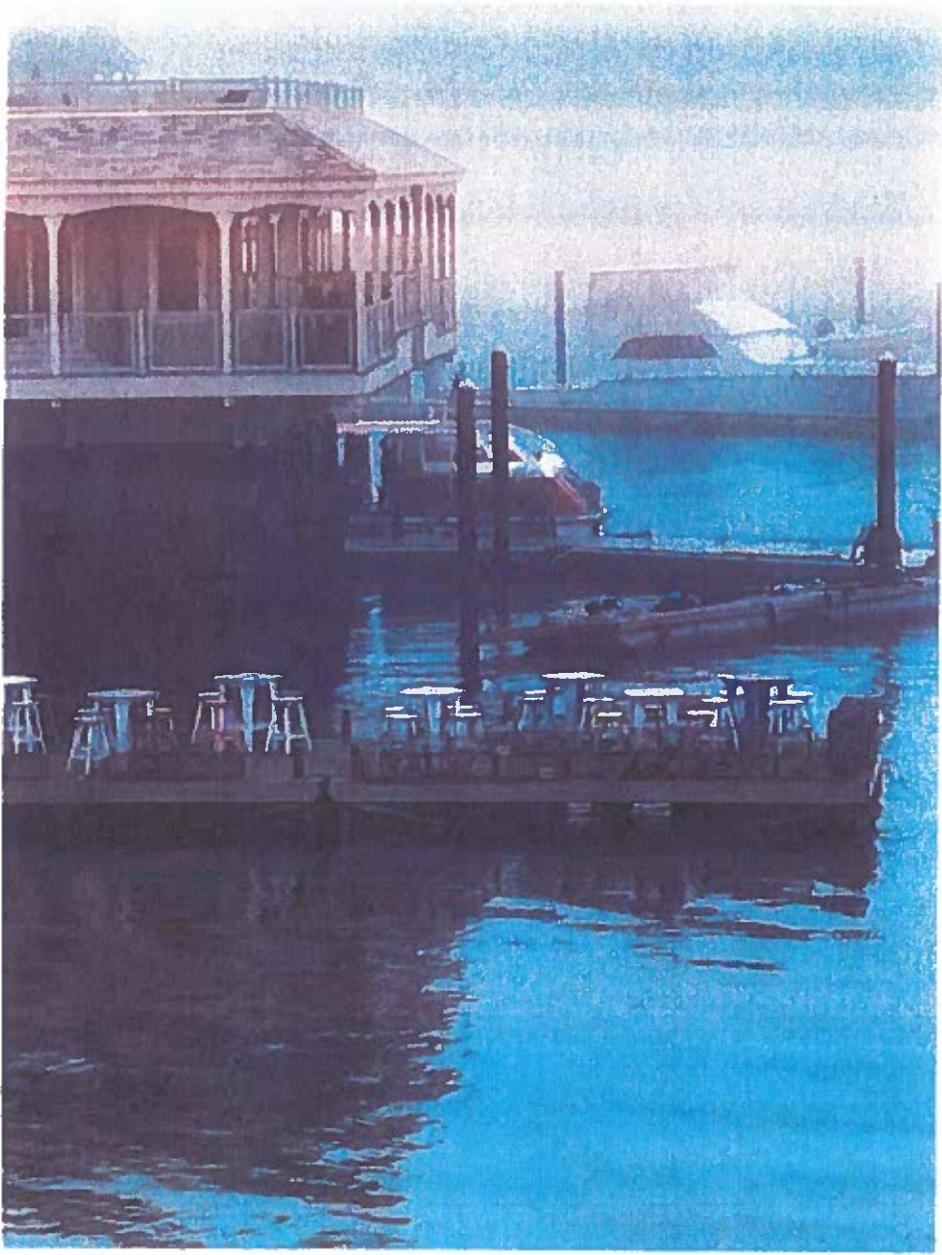
Report prepared by Angela Chamberlain, Code Enforcement Officer.

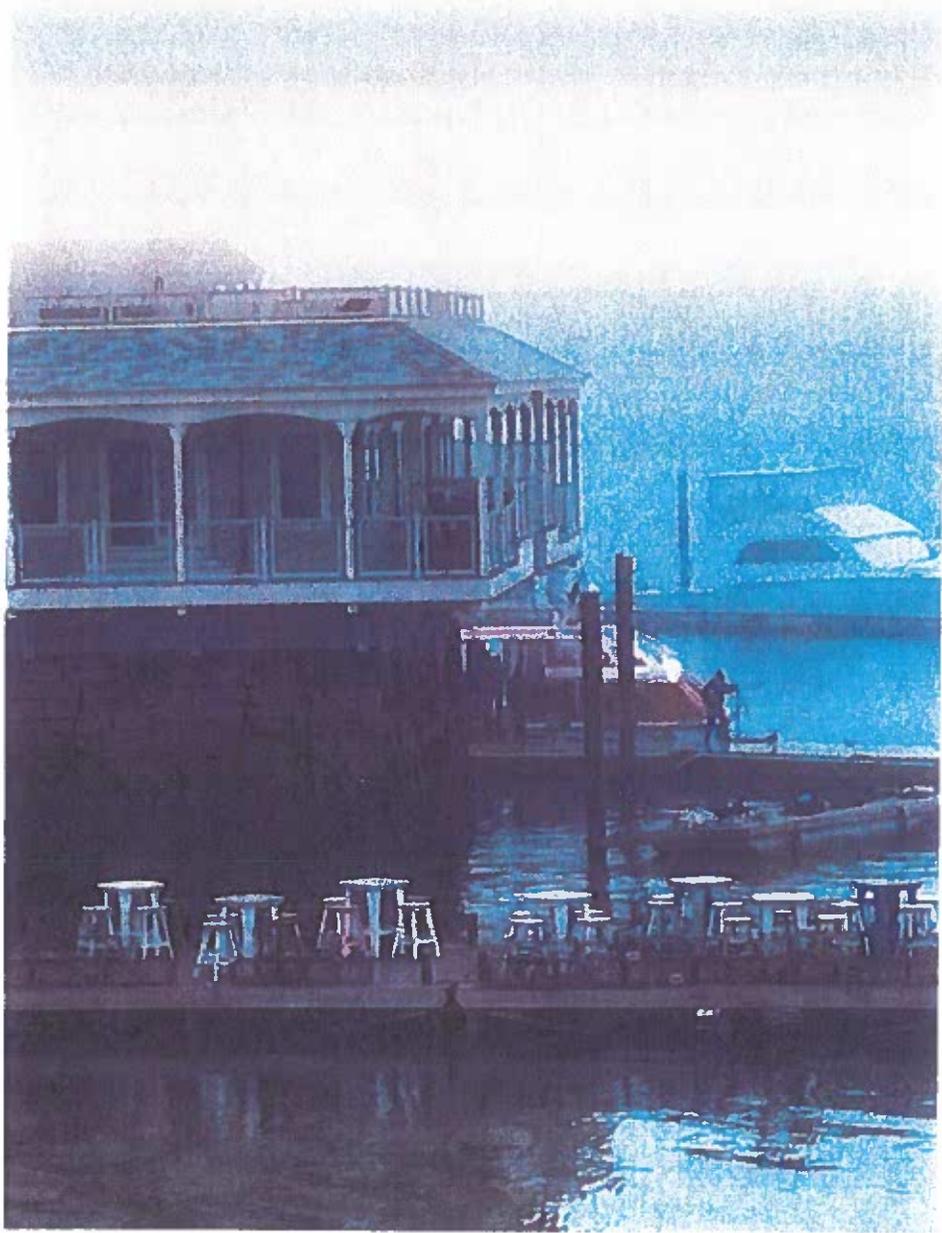












On Tuesday, June 18, 2024, the Bar Harbor Town Council adopted the following amendment to the Municipal Code. The amendment takes effect July 18, 2024. A copy has been filed with the Town Clerk

Cruise Ship Disembarkation Ordinance Amendment

Town of Bar Harbor

2024-06

An amendment to enact Chapter [###]: Cruise Ship Disembarkation

The Town of Bar Harbor hereby ordains that Chapter [###]: Cruise Ship Disembarkation, is enacted as follows:

[Please Note: Old Language is ~~stricken~~. New language is underlined.]

Chapter [###]. Cruise Ship Disembarkation

§ [###]-1. Purpose:

The purpose of this Chapter is to govern the disembarkation of Persons to docks or land within the Town from cruise ships and implement the purpose and intent of § 125-77(H) of the Town Code, as well as the promotion of the health, safety, and general welfare of the present and future inhabitants of the Town in a manner that serves to balance the interests of the general public and those of individual property owners.

§ [###]-2. Authority:

Under federal, state and local law, the Town has regulatory authority over disembarkation of Persons into the Town. This Chapter is adopted pursuant to the Town's home rule powers as provided for in Article VIII, Part Second, of the Maine Constitution, 30-A M.R.S. §§ 2101 et seq.

§ [###]-3. Validity and Severability:

If any section, subsection, clause, or phrase of this Chapter shall be found to be invalid or unconstitutional, such invalidity shall not affect the remaining provisions of this Chapter, and to that end the provisions of this Chapter are hereby declared severable.

§ [###]-4. Administration:

The provisions of this Chapter shall be administered jointly by the Code Enforcement Officer and Harbor Master or their respective designee(s).

§ [###]-5. Definitions:

Except as otherwise provided by this Chapter, language used herein shall be construed as set forth in § 125-108 of the Town Code and specific words and phrases shall have the meanings set forth in § 125-109 of the Town Code.

As used in this Chapter, the following terms shall have the following meanings:

Cruise Ship - "cruise ship" has the same meaning as set forth in § 153-22(B) of the Town of Bar Harbor Code.

Cruise Ship Disembarkation Facility ("CSDF") - a public or private property, or a public or private structure, used for disembarkation of persons arriving on land from cruise ships.

CSDF Owner – an individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, or other legal entity that owns, operates, or otherwise is authorized to represent the CSDF.

Disembarkation - The arrival of persons to docks and/or land within the Town from cruise ships by tender vessels, or otherwise.

Persons - For purposes of this Chapter and the enforcement of § 125-77(H), "Persons" means passengers of cruise ships and not those persons covered by 33 C.F.R. § 105.200 and 33 C.F.R. § 105.237 (titled "System for seafarers' access"), namely, "vessel personnel," "vessel crew," "seafarers assigned to a vessel," "pilots," and "representatives of seafarers' welfare and labor organizations" (collectively, "Crew"). The word "person" (i.e. not capitalized) shall have the meaning provided by § 125-108 of the Town Code.

§ [###]-6. Requirements to Operate or Disembark at a CSDF

A. Permit Required:

No person may allow or facilitate the disembarkation of Persons from a cruise ship over land or operate a CSDF without having first obtained a permit to operate a CSDF ("CSDF Permit").

B. Cruise Ship Reservation Required:

No CSDF or person shall receive disembarking Persons from a cruise ship that has not first received confirmation from the Harbor Master for a booked reservation for anchorage pursuant to the Town of Bar Harbor Cruise Ship Standard Operating Procedures, as they may be amended.

C. Disembarkation Application and Permit Required:

(1) Application Required. A CSDF Owner shall submit an application to the Code Enforcement Officer, or designee, for a Disembarkation Permit to allow on a specified calendar day a specified number of Persons not exceeding 1,000 to disembark from one or more cruise ship(s) with a confirmed reservation for anchorage.

(2) Application Review. Applications shall be reviewed acted upon in the order in which they were received within 30 days of receipt. The application must identify the specific site of disembarkation, the calendar day of disembarkation, and the requested number of Persons to be disembarked to the identified CSDF and site of disembarkation on that calendar day.

(3) Issuance of Permit. Upon confirming the applicant has satisfied all other application criteria and requirements of this Chapter, the Code Enforcement Officer, or designee,

shall grant the application and issue a Disembarkation Permit for the maximum number of Persons that does not cause the Daily Disembarkation Limit established by § 6(C)(4) of this Chapter to be exceeded.

(4) Daily Disembarkation Limit. The Code Enforcement Officer, or designee, shall not issue a Disembarkation Permit that would authorize the disembarkation of more than 1,000 Persons, in the aggregate, on a single calendar day, regardless of the total number of Disembarkation Permits requested or issued for a specific calendar day.

§ [###]-7. Disembarkation Procedures.

A. Counting Method.

CSDF Owners shall employ a means to electronically count each individual person that disembarks at a given CSDF (“Counting Method”). The Counting Method must include a means for discounting from the total count of individuals all crew. The Counting Method shall be approved by the Harbor Master, or their respective designee, and subject to annual review.

B. Daily Certification.

For each Disembarkation Permit, the CSDF Owner shall submit a certification to the Code Enforcement Officer specifying how many Persons were in fact disembarked on the calendar day specified on the Disembarkation Permit and from what cruise ship said Persons disembarked.

C. Code Enforcement Officer Access.

Consistent with 30-A M.R.S. § 4452(1)(A), the Code Enforcement Officer, or designee, shall be permitted to access the site(s) of the CSDF at which Persons disembark, at any time during normal business hours, or at any time Persons are disembarking or embarking, for the purposes of ensuring and verifying that Persons are being counted properly. The CSDF shall not obstruct or otherwise interfere with said access. Whether access is necessary is within the sole discretion of the Code Enforcement Officer and Harbor Master. If access is denied, the Code Enforcement Officer may apply for an administrative search warrant pursuant to Maine Rule of Civil Procedure 80E.

D. Code Enforcement Officer Audit.

Upon request to the CSDF Owner, the Code Enforcement Officer, and their respective designee(s), shall have unobstructed and immediate access to the records and instruments used to implement the CSDF Counting Method for the purposes of auditing the CSDF Counting Method for accuracy and functionality and implementing and enforcing this Chapter and § 125-77(H) of the Town Code. Whether an audit is necessary is within the sole discretion of the Code Enforcement Officer. The CSDF Owner shall retain all records generated by the CSDF Counting Method for 3 years.

§ [###]-8. Enforcement.

A. Violation Report.

If the Code Enforcement Officer, or designee, determines that the terms of this Chapter have been violated, including without limitation if a CSDF has disembarked Persons without a Disembarkation Permit or disembarked more Persons than authorized per this Chapter and any applicable Disembarkation Permit, the Code Enforcement Officer within a reasonable time of the alleged violation, shall create a Violation Report. The violation report should include the date and time of the incident giving rise to the violation, the tender dock where the violation occurred, who witnessed the violation, the number of Persons who disembarked over the Disembarkation Permit limit, and any other pertinent information as determined relevant by the Code Enforcement Officer.

B. Penalties and Enforcement.

This Chapter shall be enforced by the Code Enforcement Officer in accordance with §§ 125-100 and 125-101 of the Town Code. CSDF Owners, individuals, firms, associations, corporations, partnerships, trusts or other legal entities found to be in violation of this Chapter may be subject to such fines, penalties, actions, and orders as are authorized by 30-A M.R.S. § 4452, as the same may be amended, provided that each disembarking Person exceeding the Disembarkation Permit is a distinct and separate violation under 30-A M.R.S. § 4452(3)(B), resulting in a minimum \$100 penalty per excess unauthorized Person.

Chapter 125. Land Use

Article VII. Permits

§ 125-77. Permit required for certain activities.

[Amended 5-7-1991; 11-2-1999]

After the effective date of this chapter, a written permit from the Code Enforcement Officer shall be required for the following activities, regardless of whether such activities have received site plan or subdivision approval or whether they also require review by the Design Review Board pursuant to Article XIII, Design Review:

- A. Flood hazard areas. All construction or earthmoving activities or other improvements within the one-hundred-year floodplain designated on the Flood Insurance Rate Maps published by the Federal Emergency Management Agency.
- B. New construction. New construction of buildings and structures.
- C. Alteration. Alteration of a building, structure, or land, or parts thereof, including but not limited to:
[Amended 5-3-2004]
 - (1) Change in size of windows or doors;
 - (2) Repair of foundations, whether concrete, cinder block, granite and posts, or piles;
 - (3) Interior renovations for change in use;
 - (4) Remodeling interior walls to create new rooms;
 - (5) Enclosing open frame porch;
 - (6) Installing skylights;
 - (7) Erection of fences;
 - (8) Construction of new steps;
 - (9) Creation of roads or driveways;
 - (10) Erection of panels for winter closure or the erection of winter storm vestibules in the Downtown Village or Waterfront Development Districts; provided, however, that a permit need only be obtained in the first year of the useful life of the structure to be erected.
[Amended 6-8-2010]
- D. Placement of signs. Placement of signs except temporary signs.
[Amended 5-3-2004]
- E. Moving or demolition. All buildings or structures which are removed from or moved onto, or moved around within, a lot or demolished.
- F. Change of use. The change of any premises from one category of land use to any other land

use

G. Activities. Any other activities described in Article III as requiring a permit from the Code Enforcement Officer.

H. Disembarking persons from cruise ships on, over, or across any property located within the Town of Bar Harbor.

[Added 11-8-2022]

- (1) For the purposes of this section, "cruise ship" has the same meaning as set forth in § 153-22B of the Town of Bar Harbor Code.
- (2) As determined by the Harbor Master, no more than 1,000 persons, in the aggregate, may disembark on a single calendar day from any cruise ship(s) and come to shore on, over, or across any property located within the Town of Bar Harbor; provided, however, that this subsection shall not apply with regard to any cruise ship reservations that have been accepted by the Harbor Master prior to March 17, 2022.
- (3) The Harbor Master shall develop rules and regulations in order to establish (a) a reservation system for cruise ships that transport persons by watercraft for disembarkation in the Town of Bar Harbor; (b) a mechanism for counting and tracking the number of persons disembarking each day; (c) a mandatory procedure for reporting violations to the Code Enforcement Officer; and (d) any other provisions that the Harbor Master deems necessary under this subsection. Any property owner issued a permit under this § 125-77H shall comply with all rules and regulations promulgated by the Harbor Master under this subsection.
- (4) This subsection shall be enforced by the Code Enforcement Officer in accordance with § 125-100 of this chapter, based on information as to violations provided by the Harbor Master, and property owners in violation of this subsection shall be subject to such fines, penalties, actions and orders as are authorized by 30-A M.R.S. § 4452, as the same may be amended, provided that each disembarking person exceeding the permitted daily limit in § 125-77H(2) is a specific violation under 30-A M.R.S. § 4452(3)(B), resulting in a minimum \$100 penalty per excess unauthorized person.
- (5) Notwithstanding 1 M.R.S. § 302, and regardless of the date on which it is approved by the voters, this subsection will be applicable as of March 17, 2022, and shall govern any and all applications for permits or approvals required under this subsection that were or have been pending before any officer, board, or agency of the Town of Bar Harbor on or at any time after March 17, 2022; provided, however, that the Town will not take any enforcement action under this subsection with regard to any cruise ship visits occurring prior to the date of adoption by voters at Town Meeting.



Town of Bar Harbor
 Planning & Code Enforcement

Cruise Ship Disembarkation Facility Permit Application

SECTION I. PROPERTY INFORMATION

Property Address: _____ Map _____ Lot _____

SECTION II. PROPERTY OWNER/APPLICANT INFORMATION

Owner: _____

Address: _____ City: _____ Zip: _____

Phone number: _____ Email: _____

Applicant: _____

Address: _____ City: _____ Zip: _____

Phone number: _____ Email: _____

NOTE: If not owner, please attach written authorization to apply for permits and/or approvals.

SECTION III. APPLICATION INFORMATION

I have attached a written description approved by the Harbor Master describing the means to count each individual person that disembarks at this Cruise Ship Disembarkation Facility. This includes a means for discounting the crew from the total amount of individuals disembarking.

"Persons" means passengers of cruise ships and not those persons covered by 33 C.F.R.

§ 105.200 and 33 C.F.R. § 105.237 (titled "System for seafarers' access"), namely, "vessel personnel," "vessel crew," "seafarers assigned to a vessel," "pilots," and "representatives of seafarers' welfare and labor organizations".

SECTION IV. INSTRUCTIONS

Fill out this Cruise Ship Disembarkation Facility Permit Application to the Code Enforcement Officer.

SECTION V.

ACCEPTANCE

The undersigned applicant acknowledges that the applicant and the person on whose behalf a permit is sought are responsible to ensure that the proposed activity complies with all applicable standards of the Municipal Code and Council policies, including but not limited to, Chapter 125 Land Use Ordinance, Chapter 153 Port and Harbor, and Chapter ____ Cruise Ship Disembarkation.

1. By accepting this permit, I agree to allow the Code Enforcement Officer, the Harbor Master or their respective designees to be present on the permitted site during disembarkation of cruise ships for the purpose of ensuring compliance with this permit and all applicable standards of the Municipal Code.
2. By accepting this permit, I acknowledge that no more than the number of persons approved by a Disembarkation permit are entitled to disembark from any cruise ships on any single day at the permitted site, and I agree to abide by the 1,000-person daily limit. "Persons" shall have the meaning provided by the Cruise Ship Disembarkation Ordinance.
3. This permit shall expire one (1) year after the date of issuance.

By accepting this permit, I agree to comply with all applicable standards of the Municipal Code.

Name _____ Date _____

Signature _____

----- For Office Use Only -----

Disembarkation Facility Permit # _____ Fee: _____

Code Enforcement Officer

Date

Harbor Master

Date



Cruise Ship Disembarkation Permit Application

SECTION I. PROPERTY INFORMATION

Property Address: _____ Map _____ Lot _____

SECTION II. PROPERTY OWNER/APPLICANT INFORMATION

Owner:
 Address: _____ City: _____ Zip: _____
 Phone number: _____ Email: _____
 Applicant: _____
 Address: _____ City: _____ Zip: _____
 Phone number: _____ Email: _____

NOTE: If not owner, please attach written authorization to apply for permits and/or approvals.

SECTION III. APPLICATION INFORMATION

Cruise Ship Disembarkation Facility Permit #: _____

Date of Disembarkation: _____

I have attached proof that a reservation for anchorage on this date has been approved by the Harbor Master.

Number of Persons to Disembark (<1,000): _____ Number of Cruise Ships _____

"Persons" means passengers of cruise ships and not those persons covered by 33 C.F.R. § 105.200 and 33 C.F.R. § 105.237 (titled "System for seafarers' access"), namely, "vessel personnel," "vessel crew," "seafarers assigned to a vessel," "pilots," and "representatives of seafarers' welfare and labor organizations".

SECTION IV. INSTRUCTIONS

Fill out this Cruise Ship Disembarkation Permit Application along with proof of accepted anchorage reservation to the Code Enforcement Officer.

SECTION V. ACCEPTANCE

The undersigned applicant acknowledges that the applicant and the person on whose behalf a permit is sought are responsible to ensure that the proposed activity complies with all applicable standards of the Municipal Code and Council policies, including but not limited to, Chapter 125 Land Use Ordinance, Chapter 153 Port and Harbor, and Chapter ____ Cruise Ship Disembarkation.

- 1. By accepting this permit, I agree to allow the Code Enforcement Officer, the Harbor Master or their respective designees to be present on the permitted site during disembarkation of cruise ships for the purpose of ensuring compliance with this permit and all applicable standards of the Municipal Code.
- 2. By accepting this permit, I acknowledge that no more than the number of persons approved by a Disembarkation permit are entitled to disembark from any cruise ships on any single day at the permitted site, and I agree to abide by the 1,000-person daily limit. "Persons" shall have the meaning provided by the Cruise Ship Disembarkation Ordinance.
- 3. This permit is only valid for the date of disembarkation listed.

By accepting this permit, I agree to comply with all applicable standards of the Municipal Code.

Name _____ Date _____

Signature _____

----- For Office Use Only -----

Disembarkation Permit # _____ Fee: _____

Date of Disembarkation _____ Persons permitted to disembark _____

Code Enforcement Officer

Date

ABUTTER'S LIST

Abutters List

[print this list](#)

Date: September 03, 2024

Subject Property Address: 55 WEST STREET Barharbor, ME

Subject Property ID: 104-010-000

Search Distance: 300 Feet

Owner: YOUNG'S PIER, LLC
Prop ID: 102-002-000
Prop Location: 35 WEST STREET Barharbor, ME

Owner: BAR HARBOR, TOWN OF
Prop ID: 102-003-000
Prop Location: WEST STREET Barharbor, ME

Owner: BH PIERS, LLC
Prop ID: 102-004-000
Prop Location: 1 WEST STREET Barharbor, ME

Owner: BHTC 111, LLC
Prop ID: 104-009-000
Prop Location: 111 WEST STREET Barharbor, ME

Owner: WITHAM, CHRISTINE M TRUSTEE
Co-Owner: CHRISTINE M WITHAM REVOCABLE TRUST
Prop ID: 104-012-000
Prop Location: 47 WEST STREET Barharbor, ME

Owner: SAND BAR COTTAGE, LLC
Prop ID: 104-070-000
Prop Location: 106 WEST STREET Barharbor, ME

Owner: 16 RODICK LLC
Prop ID: 104-071-000
Prop Location: 96 WEST STREET Barharbor, ME

Owner: GOLD PARK LLC
Prop ID: 104-072-000
Prop Location: 7 BILLINGS AVENUE Barharbor, ME

Owner: YOUNG, ROBERT E
Co-Owner: YOUNG, ELISSA
Prop ID: 104-073-000
Prop Location: 9 BILLINGS AVENUE Barharbor, ME

Owner: ABRAHAM, ROBARD
Co-Owner: ANG, MERCEDES
Prop ID: 104-074-000
Prop Location: 6 BILLINGS AVENUE Barharbor, ME

Owner: TWO BILLINGS LLC
Prop ID: 104-075-000
Prop Location: 2 BILLINGS AVENUE Barharbor, ME

Owner: LABIANCA, MICHELE S
Co-Owner: LABANCA, DORRIE
Prop ID: 104-076-000
Prop Location: 7 FEDERAL STREET Barharbor, ME

Owner: CHANT ENTERPRISES, LLC
Prop ID: 104-077-000
Prop Location: 9 FEDERAL STREET Barharbor, ME

Owner: BHV LLC
Prop ID: 104-078-000

Prop Location: 11 FEDERAL STREET Barharbor, ME

Owner: STECKEL, AMY
Prop ID: 104-079-000
Prop Location: 15 FEDERAL STREET Barharbor, ME

Owner: COLBERG, JOHN A
Co-Owner: COLBERG, NANCY G
Prop ID: 104-080-000
Prop Location: 17 FEDERAL STREET Barharbor, ME

Owner: FINE, MARC S
Co-Owner: FINE, MARION M
Prop ID: 104-081-000
Prop Location: 21 FEDERAL STREET Barharbor, ME

Owner: 90 WEST STREET, LLC
Prop ID: 104-093-000
Prop Location: 90 WEST STREET Barharbor, ME

Owner: ADE, RICHARD C TRUSTEE
Co-Owner: EDEN STREET TRUST
Prop ID: 104-094-000
Prop Location: 84 WEST STREET Barharbor, ME

Owner: GOLD PARK, LLC
Prop ID: 104-095-000
Prop Location: BILLINGS AVENUE Barharbor, ME

Owner: THE MAINE REVOCABLE LIVING TRUST OF DIXIE ANN HATHAWAY
Prop ID: 104-096-000
Prop Location: 5 FEDERAL STREET Barharbor, ME

Owner: JOYCE, SHARON
Prop ID: 104-104-000
Prop Location: 19 RODICK STREET Barharbor, ME

Owner: WEST STREET PROPERTIES, LLC
Prop ID: 104-116-000
Prop Location: 50 WEST STREET Barharbor, ME

Owner: REED, MARY ANN
Co-Owner: REED, CHRISTOPHER
Prop ID: 104-120-000
Prop Location: 7 MAIN STREET Barharbor, ME

Owner: LEISER, RICHARD
Co-Owner: LEISER, GAIL
Prop ID: 104-121-000
Prop Location: 17 MAIN STREET Barharbor, ME

Owner: DAVIS, ARTHUR
Co-Owner: C/O SPINDLETOP, INC
Prop ID: 104-125-000
Prop Location: 19 MAIN STREET Barharbor, ME

Owner: MLS PROPERTIES LLC
Prop ID: 104-129-000
Prop Location: 39 MAIN STREET Barharbor, ME

Owner: WEST STREET PROPERTIES, LLC
Prop ID: 104-145-000
Prop Location: 10 RODICK STREET Barharbor, ME

Owner: 9 LENOX PLACE LLC
Prop ID: 104-148-000

DEED

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that **Thomas Walsh**, a married person, of 23 Willow Avenue, North Hampton, County of Rockingham and State of New Hampshire 03801, **FOR CONSIDERATION PAID**, grants to Golden Anchor, L.C., a Florida limited liability company, with an address of 1000 Market Street, Portsmouth, County of Rockingham, State of New Hampshire, **with WARRANTY COVENANTS**

All of his right, title and interest in and to a certain parcel of land, together with any buildings thereon, situate in the Town of Bar Harbor, County of Hancock, State of Maine, more particularly bounded and described as follows:

Beginning on the northerly line of West Street in Bar Harbor at the southeasterly corner of land described in a deed to The Golden Anchor, Inc., recorded in Hancock County Registry of Deeds, Book 1830, Page 536; thence along the northerly line of West Street, North 80 degrees, 45 minutes, 0 seconds West, a distance of 162.2 feet to the southeasterly corner of land described in a deed to Eden Street Trust recorded in Hancock County Registry of Deeds, Book 2809, Page 212; thence along said land of Eden Street Trust, North 2 degrees, 17 minutes, 0 seconds East, a distance of 66.4 feet to an iron rod found; thence along the northerly line of said land of Eden Street Trust, North 81 degrees, 0 minutes, 0 seconds West, a distance of 49.2 feet to an iron rod found; thence along the westerly line of said land of Eden Street Trust, South 12 degrees, 5 minutes, 15 seconds West, a distance of 65.8 feet to the northerly line of West Street; thence along the northerly line of West Street, North 80 degrees, 45 minutes, 0 seconds West, a distance of 154.5 feet to the southeasterly corner of land described in a deed to 31047, Inc., recorded in Hancock County Registry of Deeds, Book 2066, Page 164; thence along the easterly line of said land of 31047, Inc., North 12 degrees, 1 minutes, 45 seconds East, a distance of 413.5 feet to a stone monument, found; thence continuing along the easterly line of 31047, Inc., North 12 degrees, 1 minutes, 45 seconds East, a distance of 114.3 feet to the northerly face of a concrete retaining wall; thence by the face of said retaining wall, South 88 degrees, 26 minutes, 45 seconds East, a distance of 115.0 feet to an angle; thence by the face of said retaining wall, North 8 degrees, 57 minutes, 0 seconds East, a distance of 52.4 feet to an angle; thence by the face of said retaining wall and a granite retaining wall, South 81 degrees, 14 minutes, 15 seconds East, a distance of 214.1 feet to an angle; thence by the face of said granite retaining wall, South 16 degrees, 21 minutes, 30 seconds West, a distance of 170.0 feet to an angle; thence by the face of said granite retaining wall, South 17 degrees, 39 minutes, 30 seconds West, a distance of 137.5 feet to the easterly face of a concrete retaining wall; thence by easterly face of a concrete retaining wall, South 27 degrees, 47 minutes, 15 seconds East, a distance of 48.9 feet to

MAINE REAL ESTATE
TRANSFER TAX PAID

an angle; thence by easterly face of a concrete retaining wall, South 51 degrees, 1 minutes, 15 seconds East, a distance of 42.2 feet to an angle; thence by easterly face of a concrete retaining wall and a prolongation of said wall, South 26 degrees, 23 minutes, 0 seconds East, a distance of 131.1 feet to the southeasterly line of land described in a deed from Michael T. Hanson et al., recorded in Hancock County Registry of Deeds, Book 1830, Page 536; thence along the southwesterly line described in said Hanson deed, North 42 degrees, 30 minutes, 0 seconds West, a distance of 97.7 feet to a drill hole in a boulder found at approximate high water line; Thence continuing along the southwesterly line described in said Hanson deed, North 37 degrees, 28 minutes, 30 seconds West, a distance of 49.7 feet to the point of beginning, enclosing 4.56 acres.

Together with all land, shore and flats lying seaward of the above described parcel extending to the low water line of the Atlantic Ocean, together with Glenn Webber wharf and other easements rights and benefits appurtenant to the above described parcel.

Bearings referenced herein are oriented to magnetic north 1969, as determined by a survey conducted by Plisga & Day, Land Surveyors.

Subject to the following easements, to the extent in force and applicable.

Utility easement from The Clark Coal Company Bangor Hydro-Electric Company dated June 7, 1965 and recorded in the Hancock County Registry of Deeds in Book 986, Page 146.

Outstanding rights, if any, to Bangor Hydro-Electric Company as referenced in a deed from Island View Corporation to Golden Anchor, Inc. dated February 1, 1979 and recorded in the Hancock County Registry of Deeds in Book 1342, Page 186.

Easement from Golden Anchor, Inc. to New England Telephone and Telegraph Company dated June 21, 1988 and recorded in said Registry of Deeds in Book 1704, Page 32.

Easement from Golden Anchor, inc. to the Bangor Hydro-Electric Company dated July 15, 1988 and recorded in said Registry of Deeds in Book 1710, Page 182.

Outstanding rights, if any, to the Town of Bar Harbor as set forth in a deed from Island View Corporation and Golden Anchor, Inc. dated October 23, 1974 and recorded in said Registry of Deeds in Book 1205, Page 522.

Meaning and intending to convey and hereby conveying the same premises described in the following referenced deeds: Book 1207, Page 442; Book 1602, Page 564; Book 1342, Page 186; and Book 1830, Page 536.

The hereinabove described lot is conveyed expressly subject to an Easement granted by said Island View Corporation and The Golden Anchor, Inc. to the Inhabitants of the Town of Bar Harbor, dated October 23, 1974 and recorded in the Hancock County, Maine, Registry of Deeds in Book 1205, Page 522, to which easement and the record thereof express reference is hereby made for all particulars therein contained.

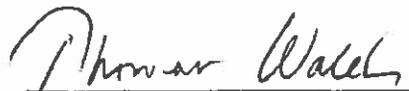
Also a right of way for all purposes of a way over a strip of land fifteen feet wide, as now laid out, extending over the Northeasterly corner of said lot Easterly and Southerly to said West Street, and the Grantee covenants to and with the said Grantor and the owners of the adjoining lots that said right of way shall never be encumbered with boxes, barrels, sweepings or any other debris or waste nor be used as a place of storage for any articles whatsoever, but shall be kept free from any obstructions and clear.

Also a right of way for all purposes of a way over a strip of land fifteen feet wide as now laid out extending along the North and East sides of said lot to West Street.

For title reference is made to: (a) a deed from Charles W. Sawyer, Jr., to The Golden Anchor, Inc., recorded in Hancock County Registry of Deeds, January 7, 1975, Book 1207, Page 442; (b) Island View Corporation to The Golden Anchor, Inc., recorded in Hancock County Registry of Deeds, February 1, 1979, Book 1342, Page 186; (c) Michael W. Hanson and Jessica M. Hanson to The Golden Anchor, Inc., dated September 28, 1990, recorded in Hancock County Registry of Deeds, Book 1830, Page 536.

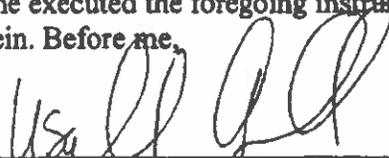
Meaning and intending to describe and convey the same premises conveyed to the Grantor herein by Warranty Deed dated November 10, 2000 and recorded in the Hancock County Registry of Deeds on November 13, 2000 at Book 2988, Page 64.

Signed this 21st day of May, 2003.


Thomas Walsh

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

On this 21st day of May, 2003, personally appeared the above named Thomas Walsh and acknowledged that he executed the foregoing instrument in his capacity for the purposes contained herein. Before me,


Notary Public/Justice of the Peace
LISA M. GRELLA, Notary Public
My Commission Expires October 24, 2008

HANCOCK COUNTY

SEAL

TAX CARD

CURRENT OWNER		UTILITIES		STRT/ ROAD		LOCATION		CURRENT ASSESSMENT	
1 Level	2 Public Water	3 Public Sewer	1 Paved	7 Waterfront	Description	Code	Appraised	Assessed	Assessed
GOLDEN ANCHOR, L C									
1000 MARKET STREET									
BUILDING ONE, SUITE 300									
PORTSMOUTH NH 03801									
All Pct ID 03-005-04A									
Prop Size									
Val Cls 1									
Tree Growth									
GASB 34 I									
Listed for									
GIS ID 104-010-000									
Assoc Pct#									
Sewer Con 01-07									
Con Date 04/04/2001									
VR Permit									
VR Presen X									
VR Unit Na									
Total 26,910,200 34,983,400									
BAR HARBOR, ME									
3403									

RECORD OF OWNERSHIP											
BK-VOL/PAGE	SALE DATE	QU	VI	SALE PRICE	VC	Year	Code	Assessed	Assessed		
GOLDEN ANCHOR, L C	06-05-2003	U	I	5,800,000	00	2024	1010	136,100	2023	1010	115,200
WALSH, THOMAS	11-13-2000	Q	I	0	00	2024	1010	26,710,000	3000	1010	22,600,800
Total 34,983,400											

EXEMPTIONS									
Year	Code	Description	Amount	Code	Description	Number	Amount	Comm Int	Comm Int
Total 0.00									

OTHER ASSESSMENTS									
Nbhd	Nbhd Name	Tracing	Batch	Appraised Bldg Value (Card)	Appraised Xf (B) Value (Bldg)	Appraised Ob (B) Value (Bldg)	Appraised Land Value (Bldg)	Special Land Value	Total Appraised Parcel Value
0001	B			28,356,400	0	745,400	5,881,600	0	34,983,400
HARBORSIDE									
TAN									
0300=100%									

BUILDING PERMIT RECORD									
Permit Id	Issue Date	Type	Description	Amount	Insp Date	% Comp	Date Comp	Comments	Notes
10323	03-14-2007	CA	Comm Addition	175,000				24X40 ADD TO DINING ROO	01-13-2022 SW 45 Assessor Review
10164	10-11-2006	FN	Foundation	35,000				GENERATOR	08-05-2021 SPW 44 No Change Reinspect
10080	08-14-2006	FN	GENERATOR &	10,000					01-28-2021 SPW 16 Field Review
9253	01-19-2005	CR	Comm Remode	400,000					06-21-2007 SW 26 Bldg Permit
8541	07-31-2003	MS	MISC	50,000				FLOATS	03-30-2006 BS 02 Measur+2/visit - Info Card I
8440	06-18-2003	RR	RES REMOD	10,000				2 FAM	03-29-2006 BS 01 Measur+1/visit
8354	05-07-2003	CA	COMM ADDITI	600,000					

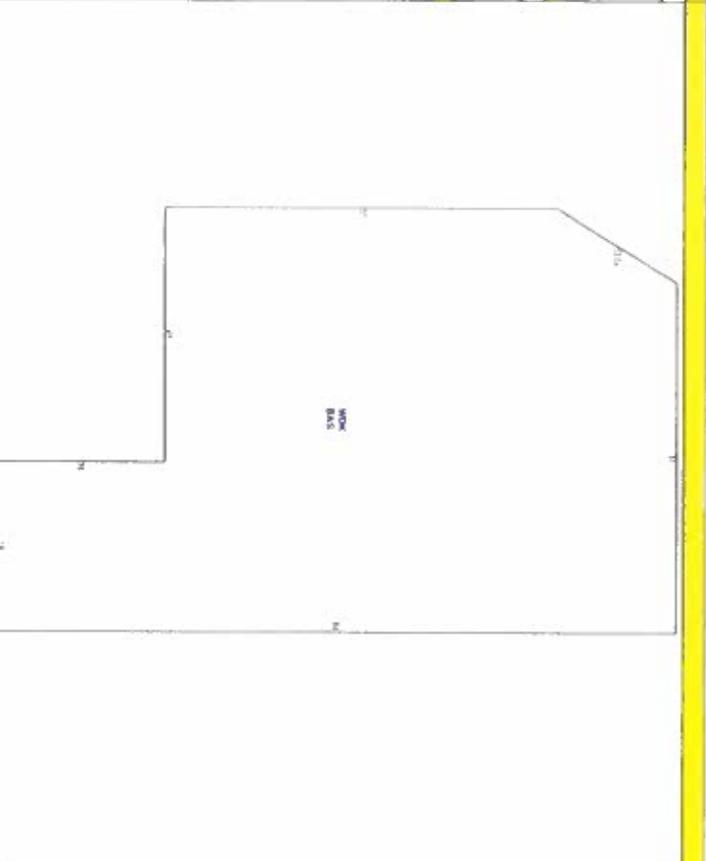
LAND LINE VALUATION SECTION														
B Use Code	Description	Zone	Land Type	Land Units	Unit Price	I. Factor	Site Index	Cond.	Nbhd.	Nbhd Adj	Notes	Location Adjustment	Adj Unit Pric	Land Value
1	3000 HOTELS MDL-9	EE	SF	43,560	3,60	2,00000	H	1,00	200	10,000		0	72	3,136,300
1	3000 HOTELS MDL-9	AC	AC	3,400	5,000,00	1,00000	0	1,00	200	10,000		0	0	170,000
1	3000 HOTELS MDL-9	FF	FF	609,000	100,00	2,00000	0	1,00	200	10,000		0	2,000	1,218,000
Total Card Land Units 4.40										AC	Parcel Total Land Area: 4.40		Total Land Value 4,524,300	

VISIT / CHANGE HISTORY									
Date	Id	Type	Is	Cd	Purpose/Result				
01-13-2022	SW			45	Assessor Review				
08-05-2021	SPW			44	No Change Reinspect				
01-28-2021	SPW			16	Field Review				
06-21-2007	SW			26	Bldg Permit				
03-30-2006	BS			02	Measur+2/visit - Info Card I				
03-29-2006	BS			01	Measur+1/visit				

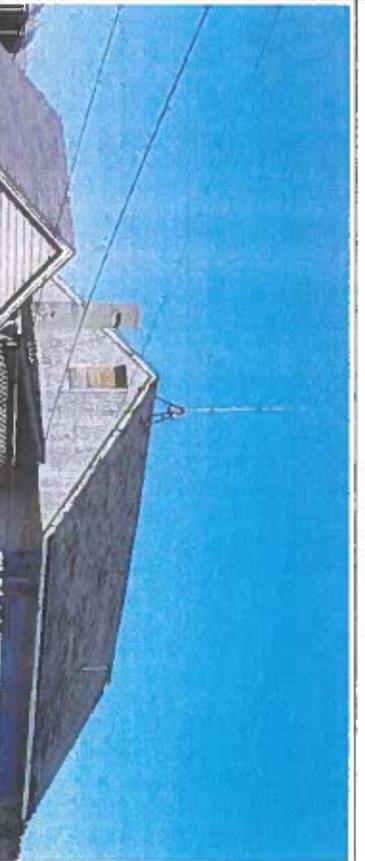
ASSESSED VALUE SUMMARY									
Appraised Bldg Value (Card)	Appraised Xf (B) Value (Bldg)	Appraised Ob (B) Value (Bldg)	Appraised Land Value (Bldg)	Special Land Value	Total Appraised Parcel Value				
28,356,400	0	745,400	5,881,600	0	34,983,400				



Element	Cd	Description	Element	Cd	Description
Style: Model	30	Restaurant			
Grade	94	Commercial			
Stones:	04	C +10			
Occupancy	1				
Exterior Wall 1	0.00	Wood Shingle			
Exterior Wall 2	14				
Roof Structure	01	Flat			
Roof Cover	12	Rubber Membran			
Interior Wall 1	06	Wood/CusPanel			
Interior Wall 2					
Interior Floor 1	06	Vinyl Floor			
Interior Floor 2	14	Carpet			
Heating Fuel	01	Coal or Wood			
Heating Type	01	None			
AC Type	01	None			
Bldg Use	3260	REST/CLUBS MDL-94			
Total Rooms					
Total Bedrms	00				
Total Baths	0				
Heat/AC	02	HEAT/AC SPLIT			
Frame Type	02	WOOD FRAME			
Baths/Plumbing	02	AVERAGE			
Ceiling/Wall	06	Unsus CLWL FI			
Rooms/Ptrns	02	AVERAGE			
Wall Height	10.00				
% Conn Wall	0.00				
1st Floor Use:	3260				



Code	Description	LB	Units	Unit Price	Yr Bilt	Cond.	Cd	% Good	Grade 1	Grade Adj	Appr. Value
DCK2	DOCK COMME	L	1,500	80.00	1970	00		85			102,000
DCK2	DOCK COMME	L	3,940	80.00	1993	00		90			283,700
FLT	FLOAT	L	3,100	16.00	1993	00		85			42,200
RMP	RAMPP	L	320	20.00	1993	00		85			5,400



Code	Description	Living Area	Floor Area	Eff Area	Unit Cost	Undeprec Value
BAS	First Floor	2,138	2,138		163.63	349,830
WDK	Deck, Wood	0	2,138		16.38	35,016
TOTAL		2,138	4,276			384,846



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CURRENT OWNER		TOPO	UTILITIES	STRT/ROAD	LOCATION	CURRENT ASSESSMENT	
GOLDEN ANCHOR, L C		1 Level	2 Public Water	1 Paved	7 Waterfront	Description	Code
1000 MARKET STREET			3 Public Sewer			RES BLDG	1010
BUILDING ONE, SUITE 300		SUPPLEMENTAL DATA				COMMERC.	3000
PORTSMOUTH NH 03801		Alt Prci ID 03-005-04A	Sewer Con 01-07	Con Date 04/04/2001		COMMERC.	3220
		Prop Size	VR Permit	VR Presen X		COMMERC.	3260
		Val Cls 1	VR Unit Na				
		Tree Growth	Assoc Pld#				
		GASB 34 I					
		Listed for					
		GIS ID 104-010-000					

RECORD OF OWNERSHIP		BK-VOL/PAGE	SALE DATE	QU	VI	SALE PRICE	VC	PREVIOUS ASSESSMENTS (HISTORY)	
GOLDEN ANCHOR, L C	3630 0080	06-05-2003	U	I	0	00	2024	Year	Code
WALSH, THOMAS	2988 0064	11-13-2000	Q	I	5,800,000	00	1010	Assessed	Year
							3000	26,710,000	2023
							3220	5,881,600	3000
							3220	1,332,200	3220
							Total	34,983,400	Total

EXEMPTIONS		Amount	Code	Description	Number	Amount	Comm Int
Year	Code	Description	Amount	Code	Description	Number	Amount
			0.00				
Total			0.00				

ASSESSING NEIGHBORHOOD		Nbrhd	Nbrhd Name	Batch
	0001	B	Tracing	Batch

NOTES		WHITE	0101=100%
Appraised Bldg. Value (Card)			28,356,400
Appraised Xr (B) Value (Bldg)			0
Appraised Ob (B) Value (Bldg)			745,400
Appraised Land Value (Bldg)			5,881,600
Special Land Value			0
Total Appraised Parcel Value			34,983,400
Valuation Method			C

BUILDING PERMIT RECORD		Permit Id	Issue Date	Type	Description	Amount	Insp Date	% Comp	Date Comp	Comments
Total Appraised Parcel Value						34,983,400				

VISIT / CHANGE HISTORY		Date	Id	Type	Is	Cd	Purpose/Result
Total Appraised Parcel Value							34,983,400

LAND LINE VALUATION SECTION															
B	Use Code	Description	Zone	Land Type	Land Units	Unit Price	Size Adj	Site Index	Cond.	Nbrhd.	Nbrhd. Adj	Notes	Location Adjustment	Adj Unit P	Land Value
3	1010	SINGLE FAM		AC	0.000	5,000.00	1.000000	1	1.00	50	1.000		0.0000	5,000	0
Total Card Land Units				0.00	Ac.	Parcel Total Land Area				4.40	Total Land Value		0		

Element	Cd	Description	Element	Cd	Description
Style: 06		Conventional			
Model: 01		Residential			
Grade: 02		D			
Stories: 1		1 Story			
Occupancy: 1		Asbest Shingle			
Exterior Wall 1: 07		Average			
Exterior Wall 2: 05		Gable/Hip			
Roof Structure: 03		Asph/F Gls/Cmp			
Roof Cover: 03		Drywall/Sheet			
Interior Wall 1: 05		Vinyl Floor			
Interior Wall 2: 06		Carpet			
Interior Flr 1: 14		Oil			
Interior Flr 2: 02		HWBB			
Heat Fuel: 05		None			
Heat Type: 01		2 Bedrooms			
AC Type: 02		1 Full			
Total Bedrooms: 1					
Total Bathrms: 0					
Total Half Baths: 0					
Total Xtra Fixts: 6		6 Rooms			
Total Rooms: 6		Average			
Bath Style: 02		Typical			
Kitchen Style: 02					

Code	Description	UB	Units	Unit Price	Yr Bilt	Cond. Cd	% Gd	Grade	Grade Adj.	Appr. Value
SHD2	W/LIGHTS ET	L	96	9.00	1930	G	75		0.00	600

OB - OUTBUILDING & YARD ITEMS(L) / XF - BUILDING EXTRA FEATURES(B)
 Cost to Cure Ovr Comment
 Dep % Ovr
 Misc Imp Ovr
 Misc Imp Ovr Comment
 Cost to Cure Ovr

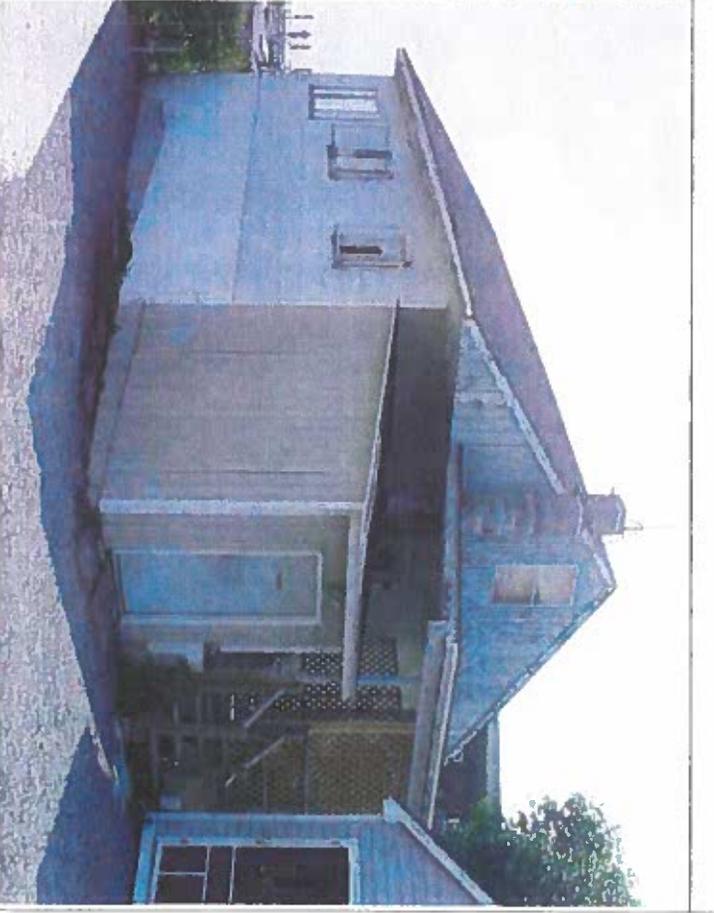
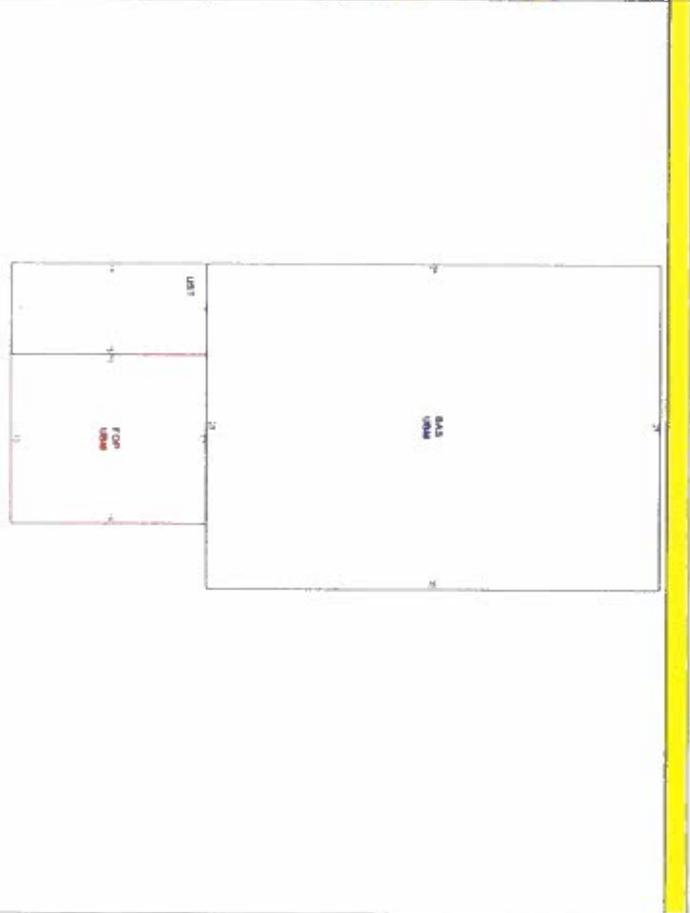
Code	Description	Living Area	Floor Area	Efr Area	Unit Cost	Undeprc Value
BAS	First Floor	875	875	195	117.82	103,089
FOP	Porch, Open, Finished	0	195	4,595	23.56	4,595
UBM	Basement, Unfinished	0	1,070	25,213	23.56	25,213
UST	Utility, Storage, Unfinished	0	105	3,770	35.91	3,770

BUILDING SUB-AREA SUMMARY SECTION

Code	Description	Living Area	Floor Area	Efr Area	Unit Cost	Undeprc Value
	Ttl Gross Liv / Lease Area	875	2,245			136,667

Parcel Id	Adjust Type	Code	Description	Factor%
	Condo Flr			
	Condo Unit			

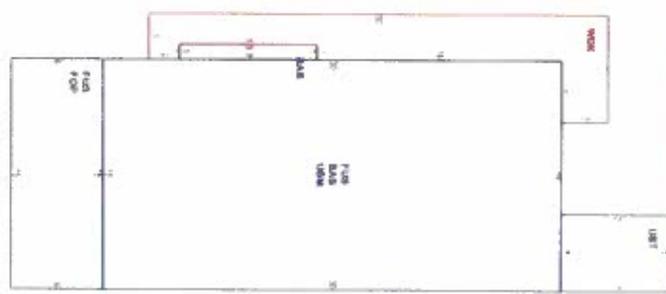
Building Value New	Year Built	Effective Year Built	Depreciation Code	Remodel Rating	Year Remodeled	Depreciation %	Functional Obsol	Economic Obsol	Trend Factor	Condition	Condition %	Percent Good	RCLND
140,667	1960		A			26	0	0	1		74	104,100	



CONSTRUCTION DETAIL				CONSTRUCTION DETAIL (CONTINUED)							
Element	Cd	Description	Element	Cd	Description	Element	Description				
Style: Model	12	Commercial									
Grade	03	Commercial									
Stories:	2										
Occupancy	1.00										
Exterior Wall 1	14	Wood Shingle									
Exterior Wall 2	02	Shed									
Roof Structure	03	Asph/F Gls/Cmp									
Roof Cover	05	Drywall/Sheet									
Interior Wall 1	03										
Interior Wall 2	05										
Interior Floor 1	14	Carpet									
Interior Floor 2	03	Gas									
Heating Fuel	04	Forced Air-Duc									
Heating Type	01	None									
AC Type	0326	REST/CLUBS									
Bldg Use											
Total Rooms											
Total Bedrms											
Total Baths											
Heal/AC	00	NONE									
Frame Type	02	WOOD FRAME									
Baths/Plumbing	02	AVERAGE									
Ceiling/Wall	06	UNUS CL/WL FI									
Rooms/Ptns	02	AVERAGE									
Wall Height	8.00										
% Corn Wall											
1st Floor Use:											
OB - OUTBUILDING & YARD ITEMS(L) / XF - BUILDING EXTRA FEATURES(B)											
Code	Description	LB	Units	Unit Price	Yr Bkt	Cond. Cd	% Good	Grade	Grade Adj	Appr. Value	
BUILDING SUB-AREA SUMMARY SECTION											
Code	Description	Living Area	Floor Area	Eff Area	Unit Cost	Undeprec Value					
BAS	First Floor	459	459		137.28	63,012					
FOP	Porch, Open, Finished	0	90		27.46	2,471					
FUS	Upper Story, Finished	540	540		137.28	74,131					
UBM	Basement, Unfinished	0	450		27.46	12,355					
UST	Utility, Storage, Unfinished	0	35		43.15	1,510					
WDK	Deck, Wood	0	93		13.29	1,236					
Ttl Gross Liv / Lease Area		999	1,667			154,715					

MIXED USE		
Code	Description	Percentage
3220	STORE/SHOP MDL-94	100
		0
		0

COST/MARKET VALUATION	
RCN	Value
	154,715
	2006
	G
	9
	1
	91
	140,800

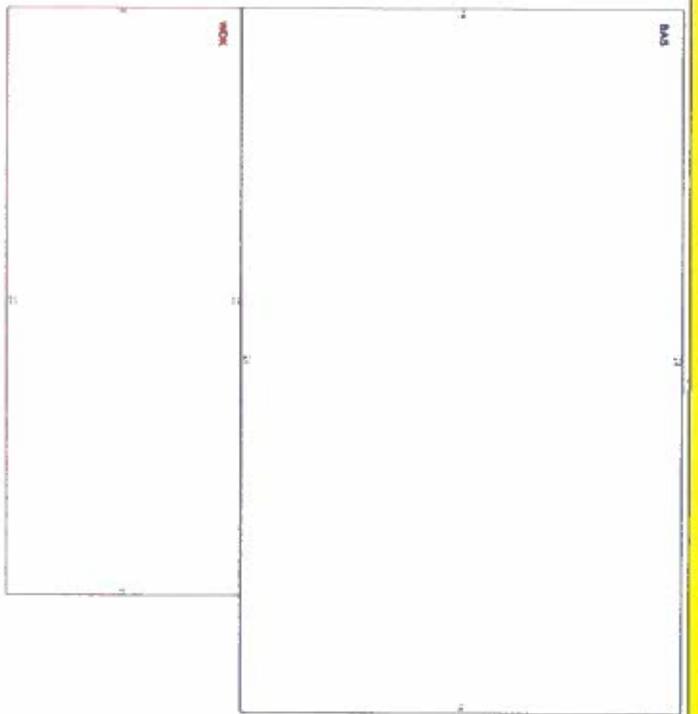


CONSTRUCTION DETAIL				CONSTRUCTION DETAIL (CONTINUED)			
Element	Cd	Description	Element	Cd	Description		
Style:	12	Commercial					
Model	94	Commercial					
Grade	01	E					
Stores:	1						
Occupancy	1.00						
Exterior Wall 1	14	Wood Shingle					
Exterior Wall 2	03	Gable/Hip					
Roof Structure	03	Asph/F Gls/Cmp					
Roof Cover	00	N/A					
Interior Wall 1	00						
Interior Wall 2	09	Pine/Soft Wood					
Interior Floor 1							
Interior Floor 2							
Heating Fuel	00	None					
Heating Type	00	None					
AC Type	01	None					
Bldg Use	3220	STORE/SHOP MDL-94					
Total Rooms	1	1 Room					
Total Bedrms	0						
Total Baths	0						
Heat/AC	00	NONE					
Frame Type	02	WOOD FRAME					
Baths/Plumbing	00	NONE					
Ceiling/Wall	00	NONE					
Rooms/Prtns	01	LIGHT					
Wall Height							
% Conn Wall							
1st Floor Use:							

OB - OUTBUILDING & YARD ITEMS(L) / XF - BUILDING EXTRA FEATURES(B)											
Code	Description	LB	Units	Unit Price	Yr Bit	Cond.	Cd	% Good	Grade	Grade Adj	Appr. Value

BUILDING SUB-AREA SUMMARY SECTION						
Code	Description	Living Area	Floor Area	Eff Area	Unit Cost	Undeprec Value
BAS	First Floor	360	360		80.05	28,819
W/DK	Deck, Wood	0	160		8.01	1,281

Total Gross Liv / Lease Area		360	520			30,100
------------------------------	--	-----	-----	--	--	--------



CURRENT OWNER
 GOLDEN ANCHOR, L C
 1000 MARKET STREET
 BUILDING ONE, SUITE 300
 PORTSMOUTH NH 03801

UTILITIES
 1 Level
 2 Public Water
 3 Public Sewer

STRT/ROAD
 1 Paved
 7 Waterfront

LOCATION
 RES BLDG
 COMMERC.
 COM LAND
 COMMERC.
 COMMERC.
 3260

SUPPLEMENTAL DATA
 All Pct ID 03-005-04A
 Prop Size
 Val Cls 1
 Tree Growth
 GASB 34 I
 Listed for
 GIS ID 104-010-000

SEWER DATA
 Sewer Con 01-07
 Con Date 04/04/2001
 VR Permit
 VR Present X
 VR Unit Na
 Assec Pct#

RECORD OF OWNERSHIP
 GOLDEN ANCHOR, L C
 WALSH, THOMAS

BK-VOL/PAGE	SALE DATE	QU	VI	SALE PRICE	VC	Year	Code	Assessed	Year	Code	Assessed
3630 0080	06-05-2003	U	I	0	00	2024	1010	136,100	2023	1010	136,100
2988 0064	11-13-2000	Q	I	5,800,000	00		3000	26,710,000		3000	26,710,000
							3000	5,881,600		3000	5,881,600
							3220	1,332,200		3220	1,332,200
Total							34,983,400			34,983,400	

EXEMPTIONS

Year	Code	Description	Amount	Code	Description	Number	Amount
			0.00				

OTHER ASSESSMENTS

Year	Code	Description	Number	Amount

ASSESSING NEIGHBORHOOD

Nbhd	Nbhd Name	Tracing	Batch
0001	B		

NOTES

Appraised Bldg. Value (Card) 28,356,400
 Appraised XI (B) Value (Bldg) 0
 Appraised Ob (B) Value (Bldg) 745,400
 Appraised Land Value (Bldg) 5,881,600
 Special Land Value 0
 Total Appraised Parcel Value 34,983,400
 Valuation Method C

ASSESSED VALUE SUMMARY

Year	Code	Assessed	Year	Code	Assessed
2023	1010	136,100	2023	1010	115,200
	3000	26,710,000		3000	22,600,800
	3000	5,881,600		3000	4,976,700
	3220	1,332,200		3220	1,127,300
Total		34,983,400	Total		29,601,400

BUILDING PERMIT RECORD

Permit Id	Issue Date	Type	Description	Amount	Insp Date	% Comp	Date Comp	Comments

VISIT/CHANGE HISTORY

Date	Id	Type	Is	Cd	Purpose/Result

LAND LINE VALUATION SECTION

Use Code	Description	Zone	Land Type	Land Units	Unit Price	I. Factor	Site Index	Cond.	Nbhd.	Nbhd Adj	Notes	Location Adjustment	Adj Unit Pric	Land Value
B	3220 STORE/SHOP		SF	0.001	1.00000	1.00	1.00	1.00				0	0	0

Total Card Land Units 0.001 AC
 Parcel Total Land Area: 4.40
 Total Land Value 4,524,300



BAR HARBOR, ME
 3403

This signature acknowledges a visit by a Data Collector or Assessor

CONSTRUCTION DETAIL

CONSTRUCTION DETAIL (CONTINUED)

Element	Cd	Description	Element	Cd	Description
Style: Model	12	Commercial			
Grade	94	Commercial			
Stones:	01	E			
Occupancy	1				
Exterior Wall 1	14	Wood Shingle			
Exterior Wall 2	03	Gable/Hip			
Roof Structure	03	Asph/F Gls/Cmp			
Roof Cover	03	N/A			
Interior Wall 1	00				
Interior Wall 2	09	P ne/Soft Wood			
Interior Floor 1					
Interior Floor 2					
Heating Fuel	00	None			
Heating Type	00	None			
AC Type	01	None			
Bldg Use	3220	STORESHOP MDL-94			
Total Rooms	1	1 Room			
Total Bedrms	0				
Total Baths	0				
Heat/AC	00	NONE			
Frame Type	02	WOOD FRAME			
Baths/Plumbing	00	NONE			
Ceiling/Wall	00	NONE			
Rooms/Ptrns	01	LIGHT			
Wall Height					
% Conn Wall					
1st Floor Use					

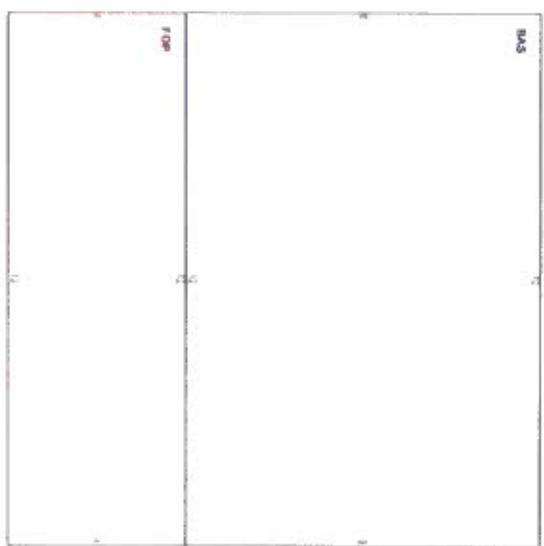
OB - OUTBUILDING & YARD ITEMS(L) / XF - BUILDING EXTRA FEATURES(B)

Code	Description	LB	Units	Unit Price	Yr Bilt	Cond. Cd	% Good	Grade Adj	Appr. Value

BUILDING SUB-AREA SUMMARY SECTION

Code	Description	Living Area	Floor Area	Eff Area	Unit Cost	Undeprec Value
BAS	First Floor	96	96	96	80.05	7,685
FOP	Porch, Open, Finished	0	48		16.68	801

Total Gross Liv / Lease Area 96 144 8,485



CURRENT OWNER		TOPO	UTILITIES	STRT/ROAD	LOCATION	CURRENT ASSESSMENT	
GOLDEN ANCHOR, L C		1 Level	2 Public Water	1 Paved	7 Waterfront	Description	Code
1000 MARKET STREET			3 Public Sewer			RES BLDG	1010
BUILDING ONE, SUITE 300		SUPPLEMENTAL DATA				COMMERC.	3000
PORTSMOUTH NH 03801		All Prcd ID 03-005-04A	Sewer Con 01-07	Con Date 04/04/2001		COM LND	3000
		Prop Size	VR Permit	VR Present X		COMMERC.	3220
		Val Cls 1	VR Unit Na			COMMERC.	3260
		Tree Growth					
		GASB 34 I					
		Listed for					
		GIS ID 104-010-000	Assoc Pld#				

RECORD OF OWNERSHIP		BK-VOL/PAGE	SALE DATE	QU	VI	SALE PRICE	VC	Year	Code	Assessed	Year	Code	Assessed
GOLDEN ANCHOR, L C		3630 0080	06-05-2003	U	I	0	00	2024	1010	136,100	2023	1010	136,100
WALSH, THOMAS		2988 0064	11-13-2000	Q	I	5,800,000	00	3000	3000	26,710,000	3000	3000	26,710,000
								3000	3000	5,881,600	3000	3000	5,881,600
								3220	3220	1,332,200	3220	3220	1,332,200
								Total	Total	34,983,400	Total	Total	34,983,400

EXEMPTIONS		Amount	Code	Description	Number	Amount	Comm Int
Year							
Code							
Description							
Total		0.00					

ASSESSING NEIGHBORHOOD		Nbrhd	Nbrhd Name	Tracing	Batch
0001			B		

OTHER ASSESSMENTS		Amount	Code	Description	Number	Amount	Comm Int
Year							
Code							
Description							
Total		0.00					

NOTES		Amount	Code	Description	Number	Amount	Comm Int
Appraised Bldg. Value (Card)						28,356,400	0
Appraised X (B) Value (Bldg)						745,400	0
Appraised Ob (B) Value (Bldg)						5,881,600	0
Appraised Land Value (Bldg)						34,983,400	0
Special Land Value						0	0
Total Appraised Parcel Value						34,983,400	0
Valuation Method							C

BUILDING PERMIT RECORD		Permit Id	Issue Date	Type	Description	Amount	Insp Date	% Comp	Date Comp	Comments
B Use Code										
Description										
Zone										
Land Type										
Land Units										
Unit Price										
I. Factor										
Site Index										
Cond.										
Nbrhd.										
Nbrhd Adj										
Notes										
Location Adjustment										
Adj Unit Pric										
Land Value										

LAND LINE VALUATION SECTION		Zone	Land Type	Land Units	Unit Price	I. Factor	Site Index	Cond.	Nbrhd.	Nbrhd Adj	Notes
B Use Code											
Description											
Zone											
Land Type											
Land Units											
Unit Price											
I. Factor											
Site Index											
Cond.											
Nbrhd.											
Nbrhd Adj											
Notes											
Location Adjustment											
Adj Unit Pric											
Land Value											

VISIT/CHANGE HISTORY		Date	Id	Type	Is	Cd	Purpose/Result
Total Appraised Parcel Value							34,983,400

ASSESSED VALUE SUMMARY		Year	Code	Assessed	Year	Code	Assessed
Appraised Bldg. Value (Card)		2024	1010	136,100	2023	1010	136,100
Appraised X (B) Value (Bldg)		3000	3000	26,710,000	3000	3000	26,710,000
Appraised Ob (B) Value (Bldg)		3000	3000	5,881,600	3000	3000	5,881,600
Appraised Land Value (Bldg)		3220	3220	1,332,200	3220	3220	1,332,200
Special Land Value		Total	Total	34,983,400	Total	Total	34,983,400
Total Appraised Parcel Value				26,910,200			34,983,400

Total Card Land Units 0.00 AC
 Parcel Total Land Area: 4.40
 Total Land Value 4,524,300



BAR HARBOR, ME
 3403

Element	Cd	Description	Element	Cd	Description
Style: Model	12 94	Commercial			
Grade	01	Commercial			
Stores:	1				
Occupancy	1.00				
Exterior Wall 1	14	Wood Shingle			
Exterior Wall 2	03	Gable/Hip			
Roof Structure	03	Asph/F Gls/Cmp			
Roof Cover	00	N/A			
Interior Wall 1	00				
Interior Wall 2	09	Pine/Soft Wood			
Interior Floor 1					
Interior Floor 2	00	None			
Heating Fuel	00	None			
Heating Type	01	None			
AC Type	01	None			
Bldg Use	3220	STORESHOP MDL-94			
Total Rooms	1	1 Room			
Total Bedrms	0				
Total Baths	0				
Heat/AC	00	NONE			
Frame Type	02	WOOD FRAME			
Baths/Plumbing	00	NONE			
Ceiling/Wall	00	NONE			
Rooms/Prtns	01	LIGHT			
Wall Height					
% Conn Wall					
1st Floor Use:					

OB - OUTBUILDING & YARD ITEMS(L) / XF - BUILDING EXTRA FEATURES(B)	
Code	Description
	Cost to Cure Ovr Comment
	Misc Imp Ovr Comment
	Dep Ovr Comment
	Cost to Cure Ovr

Code	Description	LB	Units	Unit Price	Yr Bkt	Cond.	Cd	% Good	Grade	Grade Adj	Appr. Value
BUILDING SUB-AREA SUMMARY SECTION											
	Living Area		192								
	Floor Area		192								
	Eff Area			80.05							
	Undeprec Value										15,370

Code	Description	Living Area	Floor Area	Eff Area	Unit Cost	Undeprec Value
BAS	First Floor	192	192		80.05	15,370

BUILDING SUB-AREA SUMMARY SECTION						
Code	Description	Living Area	Floor Area	Eff Area	Unit Cost	Undeprec Value
	Ttl Gross Liv / Lease Area	192	192			15,370

Building w/ purple door

BAS



Level	Public Water	Public Sewer	Paved	Waterfront	Description	Code	Appraised	Assessed
1					RES BLDG	1010	104,700	136,100
2					COMMERC.	3000	20,546,100	26,710,000
3					COM LAND	3000	4,524,300	5,881,600
					COMMERC.	3220	1,024,700	1,332,200
					COMMERC.	3260	710,400	923,500
SUPPLEMENTAL DATA								
All Prcd ID 03-005-04A					Sewer Con	01-07		
Prop Size					Con Date	04/04/2001		
Val Cls 1					VR Permit			
Tree Growth					VR Present	X		
GASB 34.1					VR Unit Na			
Listed for								
GIS ID 104-010-000					Assoc Prid#			

Year	Code	Description	Amount	Code	Description	Number	Amount	Year	Code	Assessed	Year	Code	Assessed		
RECORD OF OWNERSHIP															
GOLDEN ANCHOR, L C															
WALSH, THOMAS															
	3630	0080	06-05-2003	U	I	0	2024	1010	136,100	2023	1010	136,100	2023	1010	115,200
	2988	0064	11-13-2000	Q	I	5,800,000	3000	26,710,000	3000	26,710,000	3000	5,881,600	3000	4,976,700	3000
						00	3220	1,332,200	3220	1,332,200	3220	1,332,200	3220	1,127,300	3220
TOTAL							34,983,400	TOTAL		34,983,400	TOTAL		29,601,400		

Year	Code	Description	Amount	Code	Description	Number	Amount	Year	Code	Assessed	Year	Code	Assessed
EXEMPTIONS													
Total 0.00													
ASSESSING NEIGHBORHOOD													
Nbhd 0001 B Tracing Batch													
NOTES													
Appraised Bldg. Value (Card) 28,356,400													
Appraised X (B) Value (Bldg) 0													
Appraised Ob (B) Value (Bldg) 745,400													
Appraised Land Value (Bldg) 5,881,600													
Special Land Value 0													
Total Appraised Parcel Value 34,983,400													
Valuation Method C													

Year	Code	Description	Amount	Code	Description	Number	Amount	Year	Code	Assessed	Year	Code	Assessed
OTHER ASSESSMENTS													
Total 0.00													

Year	Code	Description	Amount	Code	Description	Number	Amount	Year	Code	Assessed	Year	Code	Assessed
ASSESSED VALUE SUMMARY													
Appraised Bldg. Value (Card) 28,356,400													
Appraised X (B) Value (Bldg) 0													
Appraised Ob (B) Value (Bldg) 745,400													
Appraised Land Value (Bldg) 5,881,600													
Special Land Value 0													
Total Appraised Parcel Value 34,983,400													
Valuation Method C													

Permit Id	Issue Date	Type	Description	Amount	Insp Date	% Comp	Date Comp	Comments	Date	Id	Type	Is	Cd	Purpose/Result
BUILDING PERMIT RECORD														
Total Appraised Parcel Value 34,983,400														
VISIT / CHANGE HISTORY														
Total Appraised Parcel Value 34,983,400														

B	Use Code	Description	Zone	Land Type	Land Units	Unit Price	I. Factor	Site Index	Cond.	Nbhd.	Nbhd Adj	Notes	Location Adjustment	Adj Unit Pric	Land Value
9	3220	STORESHOP		SF	0.00	1.000000	1.00	1.000					0	0	0
LAND LINE VALUATION SECTION															
Total Card Land Units 0.00 AC Parcel Total Land Area: 4.40															
TOTAL LAND VALUE															
Total Land Value 4,524,300															



BAR HARBOR, ME 3403

CONSTRUCTION DETAIL **CONSTRUCTION DETAIL (CONTINUED)**

Element	Cd	Description	Element	Cd	Description
Style: Model	12	Commercial			
Grade	94	Commercial			
Stories	01	E			
Occupancy	1				
Exterior Wall 1	14	Wood Shingle			
Exterior Wall 2	03	Gable/Hip			
Roof Structure	03	Asph/F Gls/Cmp			
Interior Wall 1	00	N/A			
Interior Wall 2	09	Pine/Soft Wood			
Interior Floor 1	00	None			
Interior Floor 2	00	None			
Heating Fuel	00	None			
Heating Type	01	None			
AC Type	3220	STORE/SHOP MDL-94			
Bldg Use	1	1 Room			
Total Rooms	0				
Total Bedrms	0				
Total Baths	0				
Heal/AC	02	NONE			
Frame Type	00	WOOD FRAME			
Baths/Plumbing	00	NONE			
Ceiling/Wall	00	NONE			
Rooms/Ptns	01	LIGHT			
Wall Height					
% Conn Wall					
1st Floor Use:					

MIXED USE

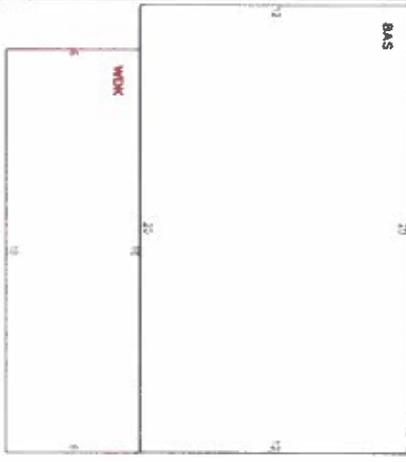
Code	Description	Percentage
3220	STORE/SHOP MDL-94	100
		0
		0

COST/MARKET VALUATION

RCN	Year Built	Effective Year Built	Depreciation Code	Remodel Rating	Year Remodeled	Depreciation %	Functional Obsol	Economic Obsol	Trend Factor	Condition	Condition %	Percent Good	RCNLD	Dep % Ovr	Dep Ovr Comment	Misc Imp Ovr	Misc Imp Ovr Comment	Cost to Cure Ovr	Cost to Cure Ovr Comment	

OB - OUTBUILDING & YARD ITEMS/L / XF - BUILDING EXTRA FEATURES/B

Code	Description	LB	Units	Unit Price	Yr Bilt	Cond. Cd	% Good	Grade	Grade Adj	Appr. Value
BUILDING SUB-AREA SUMMARY SECTION										
Code	Description	Living Area	Floor Area	Eff Area	Unit Cost	Undeprec Value				
BAS	First Floor	240	240		80.05	19,212				
WDK	Deck, Wood	0	108		8.15	881				
Totl Gross Liv / Lease Area		240	348			20,093				



(Yellow Doors)

CONSTRUCTION DETAIL

CONSTRUCTION DETAIL (CONTINUED)

Element	Cd	Description	Element	Cd	Description
Style: Model	12	Commercial			
Grade	94	Commercial			
Stories:	01	E			
Occupancy	1				
Exterior Wall 1	14	Wood Shingle			
Exterior Wall 2	03	Gable/Hip			
Roof Structure	03	Asph/F Gls/Cmp			
Roof Cover	00	N/A			
Interior Wall 1	00				
Interior Wall 2	09	Pine/Soft Wood			
Interior Floor 1	00	None			
Interior Floor 2	00	None			
Heating Fuel	00	None			
Heating Type	01	None			
AC Type	01	None			
Bldg Use	3220	STORE/SHOP MDL-94			
Total Rooms	1	1 Room			
Total Bedrms	0				
Total Baths	0				
Heat/AC	00	NONE			
Frame Type	02	WOOD FRAME			
Baths/Plumbing	00	NONE			
Ceiling/Wall	00	NONE			
Rooms/Ptms	01	LIGHT			
Wall Height					
% Conn Wall					
1st Floor Use:					

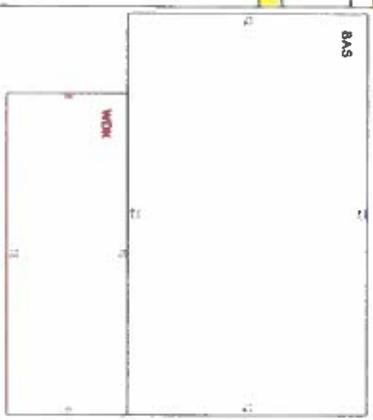
08 - OUTBUILDING & YARD ITEMS(U) /XF - BUILDING EXTRA FEATURES(B)

Code	Description	LB	Units	Unit Price	Yr Bilt	Cond.	Cd	% Good	Grade	Grade Adj	Appr. Value

BUILDING SUB-AREA SUMMARY SECTION

Code	Description	Living Area	Floor Area	Eff Area	Unit Cost	Undeprc Value
BAS	First Floor	240	240		80.05	19,212
WDK	Deck, Wood	0	96		8.34	801

Ttl Gross Liv / Lease Area: 240 336 20,013



(read above)

CURRENT OWNER		UTILITIES		STRT / ROAD		LOCATION		CURRENT ASSESSMENT	
Level	TOPO	Public Water	Public Sewer	Paved	Waterfront	Description	Code	Appraised	Assessed
1						RES BLDG	1010	104,700	136,100
2						COMMERC.	3000	20,546,100	26,710,000
3						COM LAND	3000	4,524,300	5,881,600
						COMMERC.	3220	1,024,700	1,332,200
						COMMERC.	3260	710,400	923,500
SUPPLEMENTAL DATA		Sewer Con		01-07					
All Prcl ID		03-005-04A		Can Date		04/04/2001			
Prop Size		Val CIs 1		VR Permit		X			
Tree Growth		GASB 34 I		VR Present		VR Unit Na			
Listed for		GIS ID		104-010-000		Assoc Pld#			

RECORD OF OWNERSHIP		B-K-VOL/PAGE		SALE DATE		QU / VI		SALE PRICE		VC			
Year	Code	Description	Amount	Code	Description	Number	Amount	Year	Code	Assessed	Year	Code	Assessed
								2024	1010	136,100	2023	1010	136,100
								3000	26,710,000	3000	26,710,000	3000	22,600,800
								3000	5,881,600	3000	5,881,600	3000	4,976,700
								3220	1,332,200	3220	1,332,200	3220	1,127,300
Total		34,983,400		Total		34,983,400		Total		34,983,400		29,607,400	

EXEMPTIONS		OTHER ASSESSMENTS					
Year	Code	Description	Amount	Code	Description	Number	Amount
Total		0.00		Total		34,983,400	

ASSESSING NEIGHBORHOOD		NOTES	
Nbhd	Nbhd Name	Tracing	Batch
0001	B		

BUILDING PERMIT RECORD		VISIT / CHANGE HISTORY												
Permit Id	Issue Date	Type	Description	Amount	Insp Date	% Comp	Date Comp	Comments	Date	Id	Type	Is	Cd	Purpose/Result

LAND LINE VALUATION SECTION															
B	Use Code	Description	Zone	Land Type	Land Units	Unit Price	I, Factor	Site Index	Cond.	Nbhd.	Nbhd Adj	Notes	Location Adjustment	Adj Unit Pric	Land Value
12	3220	STORE/SHOP		SF	0.001	1.000000	1.00	1.000					0	0	0

ASSESSED VALUE SUMMARY	
Appraised Bldg. Value (Card)	28,356,400
Appraised Xr (B) Value (Bldg)	0
Appraised Ob (B) Value (Bldg)	745,400
Appraised Land Value (Bldg)	5,881,600
Special Land Value	0
Total Appraised Parcel Value	34,983,400
Valuation Method	C

TOTALS	
Total Card Land Units	0.001 AC
Parcel Total Land Area:	4.40
Total Land Value	4,524,300



CONSTRUCTION DETAIL **CONSTRUCTION DETAIL (CONTINUED)**

Element	Cd	Description	Element	Cd	Description
Style: 12		Commercial			
Model: 94		Commercial			
Grade: 01		E			
Stories: 1					
Occupancy: 1.00					
Exterior Wall 1: 14		Wood Shingle			
Exterior Wall 2: 03		Gable/Hip			
Roof Structure: 00		Asph/F Gls/Cmp			
Roof Cover: 00		N/A			
Interior Wall 1: 09		Pine/Soft Wood			
Interior Wall 2: 00		None			
Interior Floor 1: 00		None			
Interior Floor 2: 00		None			
Heating Fuel: 01		None			
Heating Type: 3220		STORE/SHOP MDL-94			
AC Type: 1		1 Room			
Bldg Use: 1					
Total Rooms: 0					
Total Bedrms: 0					
Total Baths: 0					
Heat/AC: 00		NONE			
Frame Type: 02		WOOD FRAME			
Baths/Plumbing: 00		NONE			
Ceiling/Wall: 00		NONE			
Rooms/Prtns: 01		LIGHT			
Wall Height: 91					
% Corn Wall: 6,600					
1st Floor Use: RCNLD					

08 - OUTBUILDING & YARD ITEMS(L) / XF - BUILDING EXTRA FEATURES(B)

Code	Description	LB	Units	Unit Price	Yr Bit	Cond.	Cd	% Good	Grade	Grade Adj	Appr. Value

BUILDING SUB-AREA SUMMARY SECTION

Code	Description	Living Area	Floor Area	Eff Area	Unit Cost	Undeprec Value
FDU	Utility, finished, detached	0	150		48.03	7,205
Totl Gross Liv / Lease Area		0	150			7,205

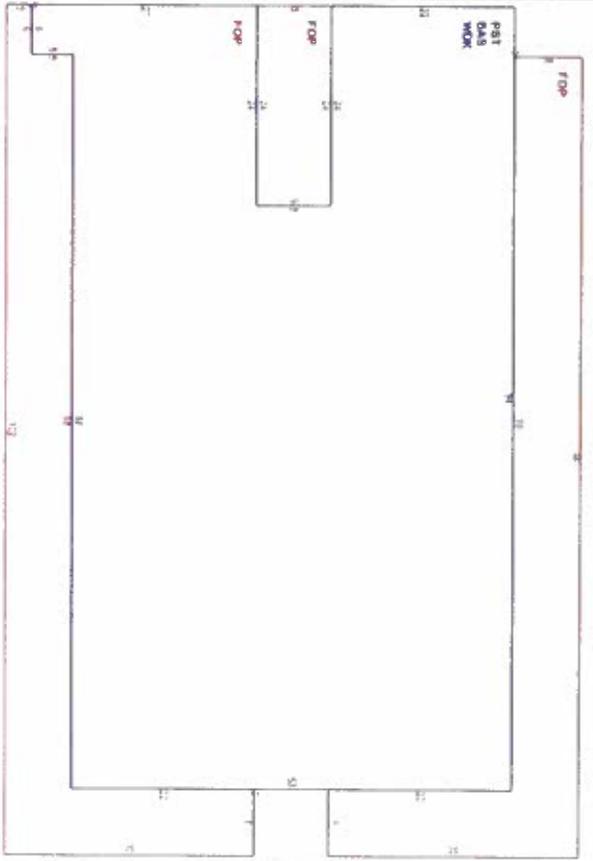
FDU

CONSTRUCTION DETAIL				CONSTRUCTION DETAIL (CONTINUED)							
Element	Cd	Description	Element	Cd	Description						
Style: 66		Hotel									
Model: 94		Commercial									
Grade: 09		A									
Stores: 1											
Occupancy: 1.00		Wood Shingle									
Exterior Wall 1: 14		Flat									
Exterior Wall 2: 01		Asph/F Gls/Cmp									
Roof Structure: 03		Drywall/Sheet									
Interior Wall 1: 05											
Interior Wall 2: 14		Carpet									
Interior Floor 1: 05		Tile									
Interior Floor 2: 04		Electric									
Heating Fuel: 11		WALL UNITS									
Heating Type: 04		Unit/AC									
AC Type: 04		HOTELS									
Bldg Use: 0300		4 Rooms									
Total Rooms: 4											
Total Bedrms: 8											
Total Baths: 8											
Heat/AC: 00		NONE									
Frame Type: 02		WOOD FRAME									
Baths/Plumbing: 04		EXTENSIVE									
Ceiling/Wall: 00		NONE									
Rooms/Prtns: 00		ABOVE AVERAGE									
Wall Height: 03											
% Corn Wall: 03											
1st Floor Use: 03											
OB - OUTBUILDING & YARD ITEMS(L) / XF - BUILDING EXTRA FEATURES(B)											
Code	Description	LB	Units	Unit Price	Yr Bt	Cond.	Cd	% Good	Grade	Grade Adj	Appr. Value
BUILDING SUB-AREA SUMMARY SECTION											
Code	Description	Living Area	Floor Area	Eff Area	Unit Cost	Undeprc Value					
BAS	First Floor	4,796	4,796		132.62	636,065					
FOP	Porch, Open, Finished	0	2,122		26.50	56,233					
PST	Posts	0	4,796		0.00	0					
WDK	Deck, Wood	0	4,796		13.27	63,660					
Ttl Gross Liv / Lease Area		4,796	16,510			755,958					

MIXED USE		
Code	Description	Percentage
3220	STORE/SHOP MDL-94	100
		0
		0

COST / MARKET VALUATION

RCN	755,957
Year Built	2012
Effective Year Built	
Depreciation Code	G
Remodel Rating	
Year Remodeled	
Depreciation %	8
Functional Obsol	
Economic Obsol	
Trend Factor	1
Condition	
Percent Good	92
RCNLD	695,500
Dep % Ovr	
Dep Ovr Comment	
Misc Imp Ovr	
Misc Imp Ovr Comment	
Cost to Cure Ovr	
Cost to Cure Ovr Comment	



LETTERS TO THE TOWN

- E.1 5/7/2024 Letter**
- E.2 5/21/2024 Letter**
- E.3 6/18/2024 Letter**
- E.4 6/21/2024 Letter**

P. Andrew Hamilton
Direct Dial 207 992-4332
ahamilton@eatonpeabody.com



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www.eatonpeabody.com

May 7, 2024

Valerie Peacock, Chair
Bar Harbor Town Council
Town of Bar Harbor
93 Cottage Street
Bar Harbor, Maine 04609

James Smith, Town Manager
Town of Bar Harbor
93 Cottage Street
Bar Harbor, Maine 04609

BY E-MAIL ONLY

Re: Town Rulemaking for Cruise Ship Ordinance

Dear Ms. Peacock and Mr. Smith:

Our office represents the owners of BH Piers, LLC and Golden Anchor LC ("Pier Owners"), two private owners of piers located at 1 and 55 West Street, respectively. At a Town Meeting on November 8, 2022, Bar Harbor voters approved an amendment to the Land Use Ordinance: Chapter 125, Section 125-77(H) ("the Ordinance") which limits the number of "persons" who may disembark from a cruise ship on every single calendar day, without penalty, to no more than 1,000.

The Ordinance departed from the practice, going back many years, of collaboration and cooperation with cruise lines that had marked the Town's acceptance and management of cruise ship visits. The Pier Owners fully participated in this cooperative approach and worked with the Town, the State and several national consulting firms to develop a community-based approach to cruise ship visits. Their participation included the design and construction of new special-purpose tender vessels to bring cruise ship visitors to the piers in increments (rather than all at once) and working with the Town to enhance management activity around the piers to improve safety, efficiency, and visitor experience. As the public safety officials for the Town have attested, cruise ship visits have not strained the Town's public safety services and, where those visits have required the provision of particular Town services, the Town has instituted fees to cover those costs. In the recent past, those fees have exceeded \$1,000,000 annually.

The amendment to Bar Harbor's land use law that Charles Sidman and the Petitioners developed was designed to bring an end to most, if not all, cruise ship visits to Bar Harbor, with an acknowledged self-interest economically in preventing cruise ship passengers from disembarking and entering the Town of Bar Harbor. After it was adopted at the November 8, 2022, Town Meeting, the Association to Protect and Preserve Local Livelihoods ("APPLL"), a group of local family business owners and employees, along with the Pier Owners and owners of the special-purpose tender vessels ("Tender Owners" and collectively "Plaintiffs") brought suit in December 2022 against the Town of Bar Harbor in federal court for the District of Maine, challenging the Ordinance on several constitutional grounds. The Penobscot Bay and River Pilots Association ("Pilots"), the pilots who guide the cruise ships to and from the federal anchorages in Frenchman Bay, intervened.

Valerie Peacock and Town Council Colleagues
Town Manager James Smith
May 7, 2024

On March 1, 2024, the federal court issued a decision finding that Ordinance's application to "persons" violated federal law protecting seafarers'¹ right to shore access, therefore, unconstitutional under the Supremacy Clause of the U.S. Constitution. The court denied Plaintiffs' and Pilots' other constitutional challenges. Plaintiffs and the Pilots have appealed the federal court's adverse rulings to the First Circuit Court of Appeals as of March 29, 2024. Until the First Circuit decides that appeal, the Ordinance's constitutionality will remain unresolved.

Whatever happens on the appeal, the federal court clearly ruled that the Ordinance violated the federal seafarer rule and is unconstitutional. Even though the Ordinance has been found unconstitutional and even though the federal court's rulings against the Plaintiffs and the Pilots is on appeal, the Town has made it clear that it is moving forward aggressively to apply, implement and enforce the Ordinance. On March 6, the Town Council issued a statement on the Ordinance pledging to enforce it against the 2025 cruise season and directing the Harbormaster to cancel or deny cruise line requests to visit Bar Harbor.

In addition, it appears that the Town Council may soon consider additional steps including attempting a Town Council Ordinance or rulemaking to change the word "persons" in the Ordinance at 125-77(H) to mean "passengers". In other words, the Town Council is claiming the right to change the wording and meaning of a law that Bar Harbor voters, themselves, approved and according to Charter and Section 125-9 of the Town Code, can only be changed at Town Meeting. This action is beyond the authority of the Town Council. If the Town Council were to set this precedent, no voter-approved land use law would be safe from revision by Town Council ordinance or even by rulemaking. In no way should Town government have the ability to "amend" the Land Use Ordinance by approving a Council Ordinance or issuing a rule that substantively changes, while pretending that, a law adopted by the voters does not mean what it says.

The Town also appears to be considering a measure instituting a "Disembarkation from Cruise Ships Permit Application" ("Disembarkation Permit") that it would impose on the Pier Owners. You have before you the form of such a proposed measure to create the Application and a brand new permit to be issued in response to the "voluntary" application.

As you and the Town's counsel are aware, the Pier Owners have long held Town-issued permits and approvals to construct both of the piers and to maintain and operate them for a variety of marine services. Neither of those permits (or for that matter, any State or federal permits or approvals issued to the Pier Owners for the piers) imposed any limit on the number of persons who can use or cross the pier generally nor as to cruise ship passengers once they have been transported by tender vessels from a given cruise ship to one of the piers.

Under Sections 125-52 through 125-54, inclusive, of the Bar Harbor Land Use Ordinance, the permits and approvals previously issued by the Town to the Pier Owners and the longstanding

¹ Under federal law, shore access must be provided to seafarers, pilots, and representatives of seafarers' welfare and labor organizations. *See* 33 C.F.R. Part 105. Seafarers are persons who are employed or engaged or work in any capacity on a ship, such as cruise ship crew members.

Valerie Peacock and Town Council Colleagues
Town Manager James Smith
May 7, 2024

uses under those permits and approvals are protected. In the event that the Town attempts to apply 125-77(H) and require a new permit or change the conditions governing those prior permits, the Pier Owners' current use under the existing permits is protected and is a "lawfully nonconforming use" of the Piers as it pertains to passenger volume.

Under the Ordinance, the sole entities that are subject to the imposition of penalties are the Pier Owners. The absence of any such sanctions on the cruise ships, the tender vessels, or the disembarking persons is a tacit admission by the Town that it lacks the authority to regulate any of them. Likewise, the Ordinance's failure to impose a fine on disembarking persons, whom the Ordinance dubs "excess unauthorized persons" is also a tacit admission that the Town lacks the authority to bar their admission into Bar Harbor.

Consequently, although the Ordinance singles out the Pier Owners alone for sanctions, neither the Ordinance nor any other Town law provides the Pier Owners with any authority to bar the 1,001st person (and all who would follow) from entering Bar Harbor at the piers (a place of "public accommodation"). That is because, as the Town knows, it cannot validly invest the Pier Owners with such authority. This means that the Ordinance exposes the Pier Owners to potentially enormous penalties but provides them with no authority to avoid the imposition of those penalties. Therefore, in addition to the reasons already mentioned, the Pier Owners will contest any implementation scheme the Town may adopt that does not empower—that is, lawfully empower—the Pier Owners to bar all "unauthorized excess persons" under the Ordinance so that they can avoid payment of ruinous fines. *See* Section 125-77(H)(4).

Finally, counsel for the Pilots has noted that the new measures proposed in the packet of materials circulated on May 3, 2024 and the overall approach announced in the March 6, 2024 statement of the Town Council exceed the authority of the Town under state and federal law.

For the foregoing reasons and more, we are also writing to confirm that, on May 3, 2024, we, together with the Pilots, filed a motion with the First Circuit Court of Appeals to enjoin the Town's post-judgment efforts to apply, implement and enforce the Ordinance.

Given the devastating economic harm to all Plaintiffs, but especially to the Pilots and the local APPLL businesses, employees and their families, we ask that the Town Council defer action on all of these pending items placed before you tonight until the court rules on the pending motion so that we are sure to get this right. With so many changes being proposed tonight, it is vital to correct deficiencies in the proposed Ordinance measures for Council adoption before sending the corrected measures to a public hearing, if all of the

We all share the understanding that it is incumbent upon you, as representatives of the Town as a whole, to make decisions that are prudent for everyone. Keeping in mind that the creation of the Cruise Ship relationship in Bar Harbor took many years of development and investment, the Town, its citizens, families and businesses, have welcomed cruise ship tourists to our community for decades. It would be extremely short-sighted to enact and enforce measures

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Town Manager James Smith
May 7, 2024

to comply with an Ordinance that is not fully resolved before the courts. Likewise, it is in the best interest of Bar Harbor, its citizens, families and businesses that rely upon this important facet of our community to maintain the community involved and negotiated MOAs until such time as the courts have reached a final decision. Again, because of the devastating economic harm to Plaintiffs and the Pilots, especially the local APPLL businesses and employees and their families and so many, it is very important that our government leaders make the necessary decision to defer all action on the proposed matters outlined on tonight's Agenda until there is finality on the outcome.

Please advise if we can clarify any questions you may have in response to this letter.

Respectfully submitted,

s/ P. Andrew Hamilton

cc: Stephen Wagner, Town Attorney

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May 21, 2024

Valerie Peacock, Chair
Bar Harbor Town Council

James Smith, Town Manager
Town of Bar Harbor
93 Cottage Street
Bar Harbor, Me 04609

Re: Town Rulemaking for Cruise Ship Ordinance

Honorable Valerie Peacock and Town Councilors and Mr. Smith:

We write to address the revised May 21 Disembarkation Ordinance in the May 17 Town Council packet; this new proposed ordinance is substantially similar to the May 7 draft new disembarkation ordinance. Other than the letter submitted by the Pilots on May 7, and we defer to that letter, we will have no further comments on the Harbor Ordinance amendments until the June 18 public hearing. This revised May 21 Disembarkation Ordinance contains substantially similar challenges for our clients as the prior draft and our clients have advised that they will not seek or take a DSF permit under either of the proposed disembarkation ordinances.

As a supplement to the May 7 letter of the Pier Owners (in response to the suggestion of the Council Chair on May 7 to submit further comments in writing), we provide these specific supplemental comments on the May 21 version of the Disembarkation Ordinance relating to the proposals that the Town Council is considering with respect to the Underlying Ordinance limiting disembarkation of all persons from cruise ships to 1,000 persons daily (adopted by Bar Harbor voters at the November 8, 2022 Town Meeting). With respect to the Disembarkation proposals ("Proposed New Ordinances"), we offer the following on behalf of the owners and operators of Golden Anchor LC and B.H. Piers, LLC (collectively the "Pier Owners"):

1. First, as the Town Council recognized in its March 6, 2024 statement, the Underlying Ordinance can only be amended by the Voters of Bar Harbor at a Town Meeting. The Ordinance, codified at 125-77(H), amended the Land Use Ordinance and, in legal proceedings, the Town has characterized it solely as a "land use ordinance."
2. However, the Ordinance's purpose and effect was to bar cruise ships with a berthing capacity of 1,000 + persons from coming to Bar Harbor. This means that the Ordinance cannot strictly function as a true land use ordinance, limiting its scope and enforcement to conditions and actions occurring within the Town's limits—which ordinarily concern the Code Enforcement Officer alone—but must also invoke the authority and cooperation of the Harbormaster who is charged with devising all necessary rules for implementing this

supposed land use ordinance. The result is a confused mix of the Harbormaster **alone** determining when more than 1,000 **persons** per day come ashore from a cruise ship and then the Code Enforcement Officer issuing a notice of violation to the pier owner for every “excess unauthorized person”—a patently offensive term to describe those who only seek to enter the community on foot—who comes from a ship based on a report from the Harbormaster.

3. At present, because the Ordinance applies without distinction to all persons disembarking from cruise ships, it is preempted by federal law protecting the right of crew members of the cruise ships to disembark. By imposing this limitation on “persons,” the Ordinance necessarily incorporated the Land Use Ordinance’s definition of “person.” Chapter 125-9 (“Person”).

The Underlying Ordinance itself provides no mechanism for differentiating between crew members and all other disembarking persons. That is because the Ordinance intended no such distinction—all “persons” above 1,000 every day of a single calendar year were to be barred. It is important to remember that a clear trial record establishes that the change from “passengers” to “persons” was intentionally done by all initiative petitioners to capture all persons (not just passengers but also the crew contingent from cruise ships) and that was forwarded by the Town Council in the revised and final initiative to the voters of Bar Harbor. The original Initiative Petitioners decided to use the term “person” throughout the text of 125-77(H) and they should not be heard now to say that the text was unintended. Nor should the Town. As the District Court ruled, “the Ordinance’s use of “persons” unambiguously extends to seafarers, so it is “not ready susceptible to a narrowing construction.” Decision and Order at p. 31. The Court also held that “an ordinance be revised only by following the procedure required for its original enactment.” Decision and Order at p. 31.

In the Pier Owners’ view, any rules that the Town may adopt to distinguish between crew members and all other persons will be invalid until such time as Bar Harbor voters amend the Ordinance to remove the conflict with federal law.

4. Putting the legal validity of such rules aside, as the Town Council is learning, developing an effective and legally valid way of distinguishing between crew members and other disembarking persons is not easy. The Proposed New Ordinances provide evidence of the complicated task of implementing the specific terms of the Underlying Ordinance.
5. Nevertheless, until the voters of Bar Harbor (and only the voters) amend the term “person,” any intervening enforcement memo, rulemaking, or Council Ordinance is ineffectual as a matter of the Town Charter and the amendment provision (Section 125-9) of the Land Use Ordinance. As to the substantive term “person” defined in Section 125-109 of the Land Use Ordinance, both the Town Charter and Section 125-9 of the LUO direct that voters

alone may make changes to land use provisions like 125-77(H), including the defined term “person.” That term “person” is an unambiguous and clear term that voters would and did understand as all people coming from a cruise ship. It is also a material term used in Section 125-77(H) that cannot be redefined by an inferior amendment process such as rulemaking of the Harbormaster or a Town Council action.

For example, if the term “person” is to mean only a “passenger,” the change must be placed before the voters for action. The Court so held. The proposed Disembarkation Ordinance, as the means by which to change the meaning of “persons” coming from a cruise ship to shore and the consequent tabulation of those persons, violates the plain text of the Ordinance, the Charter and the Court’s ruling. In short, the Town’s effort to place the proposed (and revised) Disembarkation Ordinance before residents at a public hearing before the Town Council on June 18, 2024 is fatally flawed. It is premature and its consideration as an amendment to the Land Use Ordinance must be brought in accordance and in conformity with the procedures set forth in the foregoing authorities.

6. Importantly, the Pier Owners would reinforce the point that because the Ordinance was adopted by the voters, it can only be amended by the voters. The District Court so held. Although the Land Use Ordinance provides the Town Council with authority to amend the Land Use Ordinance, that authority is narrowly circumscribed by charter and the LUO. The Town Council Ordinance may make minor or non-substantive land use ordinance changes to correct errors in any underlying land use ordinance provision or cause it to conform to state law. However, even in this narrow area, the Town Council may not act alone. The change must first be recommended by the Planning Director to the Planning Board and then by the Planning Board to the Council. Both Section C-10(A)(9)(D)(2) of the Charter and Section 125-9(D) of the LUO direct that the Planning function first review and that the Planning Board then hold a public hearing and that the Planning Board make its recommendation on any land use ordinance change.
7. The Town Council has before it a proposal titled a “Disembarkation Ordinance.” This proposed ordinance would both implement the Underlying Ordinance and amend the term “person” used in 125-77(H) and 125-109 of the Land Use Ordinance. In the Pier Owners’ view, the revised Disembarkation Ordinance, as proposed, is invalid. It has not originated with or been reviewed by the Planning Director and the Planning Board. Therefore, it cannot go directly to a public hearing on June 18 before the Town Council; it must first go to a hearing before the Planning Board where the Planning Board can consider whether or not to approve the Disembarkation Ordinance, as an amendment to Section 125-77(H) of the Land Use Ordinance on the merits.
8. As to the proposed new Disembarkation Ordinance, counsel for the Pier Owners appeared at the May 7 Town Council meeting and commented on the earlier draft Disembarkation

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Ordinance. At that meeting, the Town Council took no action on the Disembarkation Ordinance. During that meeting, we advised that the Disembarkation Ordinance (as proposed on May 7 and now as revised for May 21) requires a “mandatory” land use application.

- A. We also reiterate the objection that we raised at the May 7 Town Council meeting that the Disembarkation Ordinance was and is deficient because, among other things, it would impose a mandatory land use application on the Pier Owners without recognizing the Pier Owners’ non-conforming use rights under Sections 125-52 through 125-54 under the Pier Owners’ existing land use permits that allows more than 1,000 cruise ship passengers and all crew members to disembark. Those uses of the Piers are consonant with the well-established historical welcoming of all persons coming from cruise ships across the piers every year over several decades.

The nonconformity provisions in those sections of the land use ordinance protect “a legally existing (grandfathered) nonconforming use that lawfully existed immediately prior to the enactment or any subsequent amendment of this chapter (Chapter 125 or the Land Use Ordinance).” Section 125-52 of the Land Use Ordinance. Since the Underlying Ordinance was drafted and adopted as Section 125-77(H) of the Land Use Ordinance, all use of the Piers that was permitted and in legal existence prior to November 8, 2022 is grandfathered and protected. These uses, like all other grandfathered uses that abound in Bar Harbor, may continue notwithstanding subsequent LUO amendments that make those uses lawfully nonconforming. No one would dare presume to take away the nonconformity protections for all similarly situated property owners under the Bar Harbor Land Use Ordinance.

Notwithstanding efforts in the Underlying Ordinance and in any of the Proposed New Ordinances to implement the Underlying Ordinance, my clients reserve all rights and claims to take or diminish the grandfathered rights to continue lawfully nonconforming uses.

- B. We also object that the Disembarkation Ordinance would purport to require the Pier Owners to “count heads” —that is, counting the number of “persons” who disembark onto the Pier Owners’ piers from cruise ships in a single calendar day—in contradiction to section 125-77(H)(2) which expressly assigned that responsibility to the Harbormaster (Section 125-77(H) simply reads: “as determined by the Harbormaster.”)
- C. In addition, as we stated at the May 7 Town Council meeting and as we reiterate in these comments, the Pier Owners are not provided with lawful authority to keep passengers or crew from using or walking across their piers to come into Bar Harbor. This means that the Ordinance imposes liability on the Pier Owners without providing

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the Pier Owners with the legal authority to avoid the imposition of those fines. In this respect, the Ordinance offends the most basic principles of fundamental fairness.

- D. Given the many legal deficiencies in the Ordinance and in the supposedly curative Disembarkation Ordinance (both procedurally and substantively), the Pier Owners feel it only fair to put the Town Council on notice that they cannot subject themselves to legal jeopardy by applying for a disembarkation facility permit and, thereby, subject themselves to fines of up to \$5,000 per person coming across their Piers. We should be clear on this point—we do not believe that the Town can legally invest the Pier Owners with the authority to enforce the Ordinance against disembarking persons who, in the Pier Owners view, have every legal right to enter into Bar Harbor. Nonetheless, if the Town intends to impose potentially ruinous per-person fines on the Pier Owners under the Ordinance’s authority, it must at least **attempt** to provide the Pier Owners with the authority to avoid those fines.

We believe that the rigors of the Town Charter and the Land Use Ordinance must govern the Town, its property owners and voters in moments like this. For these reasons, and given the comments of the Pier Owners above and in the May 7 letter (a copy of which is enclosed and submitted for the record with this supplemental letter), we ask that the Town Council:

1. Send the substantive changes to 125-77(H) to the voters;
2. Respect and uphold the existing protections for lawfully nonconforming uses of the Piers and the rights of the Pier Owners;
3. Subject any “rulemaking” pursuant to the purported authority of 125-77(H) or any Town Council Ordinance to change or implement 125-77(H) to valid and established procedures. These include providing for Planning Board review, a public hearing before the Planning Board, and the issuance of a Planning Board recommendation pursuant to Section C-10(A)(9)(d)(2) of the Town Charter and Section 125-9(D) of the Land Use Ordinance; and
4. Again, take no action until conforming changes to both the process and the text of the Town’s New Proposed Ordinances are made.

Thank you for your consideration.

Kind regards,

P. Andrew Hamilton

Stephen Wagner, Esq.

June 18, 2024

Stephen W. Wagner, Attorney
Rudman Winchell
84 Harlow Street
PO Box 1401
Bangor, Me 04402

James Smith, Town Manager
Town of Bar Harbor
93 cottage Street
Bar Harbor, Me 04609

Re: Proposed Disembarkation Ordinance

Dear Stephen and James:

I am writing regarding the proposal before the Town Council tonight on an ordinance directed at persons disembarking from cruise ships (“the “Disembarkation Ordinance”) to implement, at least in part, the ordinance that added Section 77(H) to chapter 125, the Town’s Land Use Ordinance, which was adopted at the November 8, 2022 Town Meeting (“the Ordinance”). The Ordinance limited the disembarkation from cruise ships to no more than 1,000 persons in any give calendar day We have written on this proposal before and refer to our letters of May 7 and May 21 to the Town Council for further context.

We understand that proposed disembarkation ordinance arises out of a dual track by which, on one track, the Town Council is seeking to implement the Ordinance, and, on the other, the Town Council will be proposing a repeal of the Ordinance to Bar Harbor voters, to be considered at the November 5, 2024 Town Meeting and its replacement by a new law.

We view these two tracks as interrelated with precipitous action on one track affecting and potentially impairing progress on the second track. The Disembarkation Ordinance is fatally flawed and, if adopted in its current form, will create another point of friction with the owners and operators of BH Piers, LLC and Golden Anchor, LC (“the Pier Owners”), By way of example, the Disembarkation Ordinance would purport to delegate to the Pier Owners the responsibility for developing a process and standards by which crew members disembarking from cruise ships would

be distinguished from all others disembarking persons and would be allowed to cross into Bar Harbor without being counted as “excess unauthorized persons.”

Since, as the District Court held, disembarking crew members have a right to disembark which is protected by federal law, it is evident that by standards by which crew members are distinguished from all other persons has significant legal consequences. The responsibility for making those distinctions lies with the Town under the Ordinance (“sole determination of the Harbor Master”) and its capacity as a municipal government. At this point, we would note only that—as we believe should be apparent—this is not a delegable duty. Thus, the delegation that the Disembarkation Ordinance contemplates is invalid and also inconsistent with the underlying Ordinance.

The new licensing authority contemplated by the Disembarkation Ordinance would also impair the Pier Owners long-held, constitutionally-protected vested rights in the permits that the Town issued to them many years ago.

In addition to the legal infirmities in these aspects of the Disembarkation Ordinance, it also creates the risk that those who oppose the Ordinance may embark on a third track—an initiative directed at the Ordinance, itself.

We understand that the Town Council’s consideration of the Disembarkation Ordinance will allow us to comment on it more fully. We appreciate that opportunity and will certainly avail ourselves of it. In the meantime, we would respectfully ask the Town Council to defer adoption to a point in time adequate to allow the ripening of both tracks and proceed carefully and deliberately and allow itself and the public the greatest possible opportunity to fully consider the Disembarkation Ordinance and its implications of the Town and all who may be affected by it.

Kind regards,

s/Andrew Hamilton

cc: Bar Harbor Town Council



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June 21, 2024

Valerie Peacock, Town Council Chair
Town of Bar Harbor
93 Cottage Street
Bar Harbor, ME 04609

James Smith, Town Manager
Town of Bar Harbor
93 Cottage Street
Bar Harbor, ME 04609

Re: Disembarkation Ordinance

Dear Council Chair Peacock and Manager Smith:

We are writing on behalf of B.H. Piers, LLC and Golden Anchor, L.C. (“Pier Owners”) concerning the Disembarkation Ordinance that the Town Council passed at its June 18, 2024, meeting.

Confirmation of Town Council Prior Commitment to 2024 + 2025 Cruise Seasons: To begin with, we ask that the Town ask whether, in adopting the Disembarkation Ordinance, the Council intends to continue to honor its March 6 commitment to 1,000+-capacity cruise ships with confirmed reservations for 2024 and for cruise ships with 2025 reservations made before March 17, 2022. We ask this question because the Disembarkation Ordinance will take effect 30 days from the date of passage, and it contains no exception for the remainder of the 2024 cruise season or for post-March 17, 2022, reservations for the 2025 cruise season. We ask, therefore, that the Council confirm that Disembarkation Ordinance will not apply to the 2024 cruise season.

As you know, at several previous points, the Pier Owners and others had commented on the draft Disembarkation Ordinance and expressed serious reservations about its structure and overall validity. It appears that, notwithstanding those May 7, May 21, and June 18 comments, the Town Council approved the Disembarkation Ordinance largely unchanged. As enacted, the Disembarkation Ordinance is significantly flawed, and the Pier Owners are continuing to assess their options in the wake of its enactment.

In addition to seeking clarification and confirmation on the Town Council’s commitment on the 2024 and 2025 cruise seasons, the Pier Owners also comment on two terms in the Disembarkation Ordinance. By focusing on these two terms, the Pier Owners do not mean to suggest that Disembarkation Ordinance is valid in all other respects. To the contrary, the Disembarkation Ordinance is seriously flawed. In fairness to the Town, however, the Pier Owners decided to bring these two deficiencies to the Town Council’s immediate attention.

Counting Method: Section 7.A is entitled, “Counting Method”, and it appears to require the Pier Owners to develop a “Counting Method” that will “include a means of discounting from the total count [of those disembarking from cruise ships] all crew.” Section 7.A provides further that the Counting Method that the Pier Owners develop “shall be approved by the Harbor Master or their (sic) designee and subject to annual review.”

Ms. Valerie Peacock, Town Council Chair
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Section 7.A's apparent attempt to delegate the responsibility to differentiate between crew members whose right to disembark is protected by 33 C.F.R. § 105.237 and all other disembarking persons is invalid. A governmental entity possessing civil and criminal jurisdiction may not delegate the authority to set standards and procedures by which civil or criminal penalties may be imposed to private persons or entities. It may not even delegate such authority to the judiciary. Under the Maine Constitution, this legislative power to set standards by which civil or criminal liability may be imposed is exclusively held by the government and the government may not transfer or otherwise delegate that authority to the private parties.

In the initial Ordinance, Chapter 125-77(H)—which the Disembarkation Ordinance purports to largely supersede and render irrelevant—the duty to develop standards and procedures by which disembarking persons would be accounted for was assigned to the Harbor Master. *See* Ch. 125, § 77(H)(3). On this point, the Ordinance recognized that elected officials or the voters at large can only delegate such authority to governmental officials who are accountable to elected representatives and the voters at large. The Pier Owners are not government officials and cannot be made to perform acts that are exclusively governmental in their character and effect. The Counting Method provision is invalid and exceeds the Town Council's authority to delegate.

The Pier Owners also note that federal law has a strong presence in the subject matter of security, identification and immigration procedures for foreign vessel and air crew entrance and disembarkation issues. The Pier Owners are not qualified or authorized by the federal government to, themselves, develop and implement measures and protocols to distinguish between disembarking crew and all other disembarking persons, including such persons disembarking from foreign-flagged vessels lying in federal anchorages near Bar Harbor. Nor do the Pier Owners believe that the federal government would authorize them to devise and implement such measures.

Therefore, absent a final court order, the Pier Owners do not accept and will not perform the counting and crew "discounting" functions purportedly imposed by Section 7.A. The Pier Owners are providing this notice to the Town so that the Town will have ample notice that the Pier Owners will not voluntarily comply with Section 7.A and the Town may plan accordingly.

Pier Permits/Vested Rights: The Pier Owners have established previously that they hold permits issued by the Town decades ago that authorize the construction and use of the two private piers by persons without numeric limitation. The land use provisions at 125-52 through 125-54 protect all property owners whose prior authorized and established uses become lawfully nonconforming by virtue of a subsequent enactment such as 125-77(H) or the new Disembarkation Ordinance that imposes a new numeric limitation on the use of those properties. In the case of the Harbor Place and Harborside Piers, the construction and long use (more than 2 decades) of those Piers has given rise to vested rights, such that a subsequent enactment cannot divest those property owners of their vested rights. *See Sahl v. Town of York*, 760 A. 2d 266 (2000); *NECEC Transmission LLC v. Maine BPL*, 2022 ME 48. Similar to all property owners, the Pier Owners cannot be compelled to make an application under a new Disembarkation Ordinance for a permit that will divest the Pier Owners of their vested rights. The Pier Owners will continue to protect

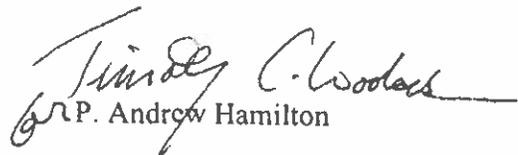
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and will assert their vested rights and to protect their lawfully nonconforming use of their Piers without numeric limitation.

For the reasons stated above, the Town should not plan on the Pier Owners either (1) abandoning their rights under existing permits and prior law or (2) complying with Section 7.A's unlawful requirement that they establish a Counting Method. The Pier Owners thank you for the opportunity to request that the Town continue to honor its March 6 position on the 2024 and 2025 cruise seasons and to state their positions with respect to the Disembarkation Ordinance's Counting Method and pier permitting provisions.

We appreciate the Town's attention to and consideration of these points. We also ask that the Town respond to us at its earliest opportunity.

Kind regards,


P. Andrew Hamilton

CC: Stephen Wagner, Esq.

MAINE MUNICIPAL MANUAL
COVER PAGE
CHAPTER 2
JURISDICTION OF THE APPEALS BOARD

Maine
Municipal
Association

Manual for Local Land Use Appeals Board

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CHAPTER 2 – Jurisdiction of the Appeals Board

In the absence of a State statute, local ordinance, or charter provision expressly stating that a decision may be appealed to a local board of appeals, the board of appeals has no “jurisdiction” (legal authority) to hear such an appeal. *Fisher v. Dame*, 433 A.2d 366 (Me. 1981); *Lakes Environmental Association v. Town of Naples*, 486 A.2d 91, 95 (Me. 1984). Where no local appeal is authorized, a person’s only appeal (if any) is to the Superior Court under Civil Rule of Procedure 80B, 30-A M.R.S.A. § 2691; *Lyons v. Board of Directors of SAD No. 43*, 503 A.2d 233 (Me. 1986); *Levesque v. Inhabitants of Town of Eliot*, 448 A.2d 876 (Me. 1982).

Statutory Appeals Jurisdiction

There are four statutory provisions which give jurisdiction to the appeals board over certain types of appeals.

Zoning

Title 30-A § 4353 authorizes the appeals board to hear and decide administrative appeals, interpretation appeals, and requests for variances filed in connection with decisions made under a zoning or shoreland zoning ordinance. That section also authorizes the board to grant special exception or conditional use permits in strict compliance with the ordinance, except where the planning board has been authorized by ordinance to act; in that case, the board of appeals is authorized to hear appeals from such decisions unless the ordinance requires appeals to go directly to Superior Court. (A copy of § 4353 appears in Appendix 4.)

Enforcement Decisions

Title 30-A § 2691 authorizes an appeals board to hear and decide appeals from enforcement decisions (i.e. notices of violation or enforcement orders) issued by a code enforcement officer under a land use ordinance, unless a municipality has expressly provided by charter or ordinance that certain decisions from its CEO are only advisory and may not be appealed. The Maine Supreme Court has held that a notice of “no violation” is also appealable, unless a municipality expressly provides otherwise. *Raposa v. Town of York*, 2019 ME 29, 204 A.3d 129.

Special Amusement Permits

Title 30-A § 2691(4) grants jurisdiction to appeals boards over appeals filed under the State law relating to special amusement permits (28-A M.R.S.A. § 1054). A special amusement

permit is required from the municipal officers before any licensed liquor establishment can offer “entertainment” as defined in that law. Municipalities are required to have ordinances or regulations spelling out the conditions which an applicant must meet in order to obtain such a permit.

Farmland Registration Law

Title 7 M.R.S.A. sections 51-59 establish a process that allows a landowner to register “farmland” as defined with the Department of Agriculture, Conservation, and Forestry. Abutting landowners are prohibited under section 56 from undertaking or allowing “inconsistent development” or “incompatible uses” as defined on their land within 100 feet and 50 feet respectively of properly registered farmland. Municipalities are prohibited from issuing building or use permits for “inconsistent development” or “incompatible uses.” Certain abutting lands are exempt from the prohibition. Section 57 authorizes the board of appeals to grant a variance in limited situations.

Jurisdiction by Ordinance or Charter

Unless an appeal falls within one of the statutory categories previously discussed, the appeals board must look for a local ordinance or charter provision providing the legal basis for any other type of appeal filed with the board before the board may legally act. *Sanborn v. Town of Sebago*, 2007 ME 60, 924 A.2d 1061 (and cases cited therein). Title 30-A § 2691(4) provides: “No board may assert jurisdiction over any matter unless the municipality has by charter or ordinance specified the precise subject matter that may be appealed to the board and the official or officials whose action or nonaction may be appealed to the board.” In *Sanborn*, the court held that the board could hear both a shoreland zoning appeal and an appeal of a decision to issue a permit under the Building Ordinance, even though the Building Ordinance only expressly authorized appeals from the denial of a permit. The court found that, as a matter of public policy, it was appropriate for the board to take jurisdiction over Building Ordinance issues when a shoreland zoning ordinance issue has been appealed to it.

A number of State laws indicate subject areas in which the appeals board may be authorized to act, such as building codes (30-A M.R.S.A. § 4103) and tax assessment appeals (30-A M.R.S.A. § 2526). These laws do not automatically give the board jurisdiction. They require an ordinance or charter provision to implement them. Likewise, if a municipality wants to provide a local appeal under any type of “home rule” ordinance other than zoning (e.g., site plan review, subdivision, building code), it must be sure to include an express appeal provision giving authority to the appeals board which complies with 30-A M.R.S.A.

§ 2691(4). Sample ordinance provisions are included in Appendix I of this manual. Where no ordinance authorizes a board of appeals to hear an appeal from a building inspector's decision pursuant to Title 25, chapter 313 (fire prevention statutes) or Title 10, chapter 1103 (model building and energy code), an appeal may be heard and decided by the municipal officers. 30-A M.R.S.A. § 4103; 25 M.R.S.A. §§ 2356, 2357-A; 10M.R.S.A. § 9724(5)."

Specifically as to building codes, 25 M.R.S.A. §§ 2356 and 2357-A, 10 M.R.S.A. § 9724(5), and 30-A M.R.S.A. § 4103(5) all indicate that a municipality that is enforcing the Maine Uniform Building and Energy Code, the Maine Uniform Building Code, or the Maine Uniform Energy Code may adopt an ordinance provision establishing a right to file a local appeal from a decision of a local building official and an appeal process. The ordinance may give the board of appeals jurisdiction over such appeals. If no local ordinance provision is adopted giving the board of appeals jurisdiction, the appeals provision in 30-A M.R.S.A. § 4103(5) gives the municipal officers authority to hear those appeals and governs the process. Even if an ordinance grants jurisdiction to the board of appeals, the procedures in section 4103(5) will control the board of appeals, in the absence of procedures in a local ordinance to the contrary. Section 4103(5) requires a decision to be made at the next meeting following receipt of a written appeal. It also provides that if no written decision is issued to the person who filed the appeal within 30 days after the appeal was filed, the appeal is deemed denied.

Regarding subdivision appeals, whether a municipality is reviewing a subdivision solely under the Municipal Subdivision Law (30-A M.R.S.A. § 4401 et seq.) or under a local subdivision ordinance or regulation, the board of appeals has no authority to hear subdivision appeals unless expressly authorized by municipal ordinance. Although a planning board is authorized by 30-A M.R.S.A. § 4403 to adopt subdivision regulations, it does not have the authority to include an appeal provision in its regulations; that must be done by an ordinance adopted by the legislative body (town meeting or town or city council).

The board of appeals does not have jurisdiction over appeals from a decision by the local plumbing inspector made pursuant to the Maine Subsurface Wastewater Disposal Rules, unless expressly authorized to hear those appeals by local ordinance. 30-A M.R.S.A. § 2691. The Rules provide that "appeals of decisions made by local authorities must be made to the relevant municipal officials." 10-144 CMR ch. 241, section 12(A)(1). It isn't clear what "the relevant municipal officials" means. The municipality probably should adopt an ordinance expressly authorizing the board of appeals, the municipal officers or some other local official or board to hear these appeals to be safe.

Other Assignments

In some municipalities, a board of appeals may be asked by the municipal officers or town or city manager to assist with a project such as drafting a new ordinance or revisions to an existing ordinance. While such a task may not be one which the board is legally required to perform, if the members have the time and willingness to help, then they may do so.