

1 **Town of Cape Elizabeth**
2 **Minutes of the July 26, 2011, Zoning Board Meeting**
3

4 **Members Present:**

5
6 Leonard Gulino Jeffery Schwartz
7 Christopher Straw John Thibodeau
8

9 Also present was the Code Enforcement Officer Bruce Smith.

10
11 **A. Call to Order** – The meeting was called to order by Acting Chairman Leonard
12 Gulino at 7:00 pm.
13

14 **B. Election of Officers** – David Johnson was nominated for Chairman by John
15 Thibodeau and seconded by Christopher Straw. All were in favor. John Thibodeau
16 volunteered and was nominated for Secretary/Co-Chair by Len Gulino and seconded by
17 Christopher Straw. All were in favor.
18

19 **C. Approve the Minutes of December 28, 2010** – As a quorum was not present,
20 minutes were not discussed and approval held over until next meeting.
21

22 **D. Old Business – None.**

23
24 **E. New Business**

25
26 **1)** To hear an administrative appeal of the Code Enforcement Officer's decision to not
27 require Site Plan Review for a gravel access way that traverses over Lot 9 of Map U26
28 and into Lot 6-5 of Map U26, for not requiring Site Review for agricultural use of Lot 6-5
29 of Map U26 and for not taking enforcement action for alleged Resource Protection
30 District violations on the above referenced lots. For passage of an administrative appeal
31 there needs to be a simple majority of the members present.
32

33 Acting Chairman Leonard Gulino stated that Chairman David Johnson asked him to
34 serve as chair of the board this evening.
35

36 Bruce McLaughlin, attorney representing Joyce Beecher, applicant and resident of
37 4 Windmill Lane, came to the podium. He presented a copy of the site plan for the
38 proposed blueberry farm operation that was originally presented to the Planning Board
39 and discussed the location of the access road in relation to the lots. He cited a case for
40 accessory use on the same lot as primary use from the Town of Union, Maine, versus
41 Strong. Accessory use in a residential area doesn't work because of ownership of
42 different lots.
43

44 Restrictions and categorizations of the ordinance were discussed as they relate to Site
45 Plan Review and residential, non-residential use and Resource Protection District and
46 agricultural use.
47

48 Mr. McLaughlin summarized his main arguments as: The Code Enforcement Officer
49 erred in determining that the access road is a necessary accessory use to the

1 agricultural use, and that the agricultural use, in a residential district does not require
2 Site Plan Review.

3
4 Mr. Smith, Code Enforcement Officer, stated that he put limitations on the road/ access
5 way that has been there ten years. The original application, in 1999, submitted to
6 Public Works, was for a long driveway to a single-family dwelling. The addition of
7 Resource Related language to the ordinance was to help the farm and fish communities
8 of the town. Mr. Smith felt the resource was better protected by leaving the gravel base
9 (instead of removing it) and grassing it over. Agriculture is neither residential nor non-
10 residential. Site Plan Review is not required for resource related use.

11
12 There was discussion about several trees that were removed. The tree issue is
13 separate and apart from the issue before this Zoning Board.

14
15 Bruce McLaughlin stated that Mrs. Beecher's concern is the potential of the disruption of
16 her privacy by foot traffic, tractors, and street parking for the business, as well as impact
17 on her septic. She would like an agreement in writing - not an oral agreement that could
18 be breached at any time.

19
20 Joanna Toronjo came to the podium and stated that she felt that Mrs. Beecher and her
21 attorney were going about this backward, looking at it from the appeal standpoint
22 instead of the permitting standpoint. Sec.19-6-1 lists what is permitted in Residential A
23 District. Agriculture is listed in sub-paragraph B. In Sec.19-9-2, page 219, Site Plan
24 Review is not required for agricultural use, including planting blueberries brushes and a
25 pick-your-own operation, which are permitted uses in the RA distinct.

26
27 The road (the gravel access) has been there at least ten years. It was being narrowed
28 from 14 feet to eight feet by planting of vegetation. It is gated off. The intent is to use it
29 for access by farm equipment to take care of the property, and for foot traffic for a
30 potential pick-your-own operation, and for personal foot traffic of the property owners.
31 Although Table 19-6-9 reads otherwise, it is common sense that uses that are
32 necessary and incidental for the property should be allowed. The table does state
33 existing agricultural uses are exempt from permitting.

34
35 Bruce McLaughlin returned to the podium and referenced Sec.19-10-1, which states
36 that the more restrictive and specific provision should apply. The use of the road has
37 not always been for agriculture. Under Sec.19-9-2 any nonresidential expansion or
38 change in use would require Planning Board Review. The road is not an accessory use
39 and therefore requires a permit.

40
41 Joanna Toronjo returned to the podium and referenced Sec.19-6-1.E, Performance
42 Standards for Agriculture do not apply to this agricultural use and therefore Site Plan
43 Review is not required.

44
45 Public discussion was closed.

46
47 Board members discussed whether the blueberry pick-your-own use was agriculture or
48 agriculture related use. Page 58, 4.h Agriculture Related Use is specifically listed.

1 Board members concluded that Site Plan Review is not required by the Ordinance,
2 mentioning the following: Page 63, Subsection F does not require a permit hence no
3 Site Plan Review. Page 220, Sec.19-9-2.A.2, any nonresidential expansion, referred to
4 by the appellant, doesn't apply to agriculture. Page 176, Sec. 19-8-1.1 buffering side
5 and rear yards of nonresidential use, except agriculture, was designed to be friendlier to
6 agriculture.

7
8 Sec. 19-6-1.A states that the purpose of this district is to allow residential development
9 that is compatible with the character, scenic value, and traditional uses of rural lands ...

10
11 The issue of the access driveway was more difficult. The impact on the buffer zone has
12 lessened over time. Intended use over time has changed from a driveway, to timber
13 harvesting.

14
15 Mr. Smith remembered that the road had to hug the corner of the Beecher lot to stay
16 away from the Resource Protection Area. The Town and the Code Enforcement Officer
17 were ok with the initial road in 1999. New roads would not be allowed now.

18
19 Based upon the assumption that the access is gated, it is not a roadway for public
20 access and used only for the farm tractor and foot traffic and nothing more, it is not a
21 public roadway. Anyone can drive a vehicle on his or her own property. They are not
22 growing in the Resource Protection Zone, but just in the RA zone. They have consent
23 from the family member, whose lot they cross for access to the back lot. Chair Gulino
24 does not feel it triggers anything under the Ordinance.

25
26 Parking would be an issue for the town police and CEO. That is not within the Board's
27 jurisdiction.

28
29 The Chair opened the floor for further public discussion.

30
31 Joanna Toronjo returned to the podium, and stated that the quality of the wetland may
32 have changed since the driveway access was installed.

33
34 Bruce McLaughlin came to the podium, cited, Page 220, Sec.19-9-2, under Applicability,
35 the owner shall obtain site plan approval prior to undertaking any alteration or
36 improvement of the site including grubbing or grading, obtaining a building or plumbing
37 permit for the activities or commencing any of the following activities... so the
38 requirement of a permit is not a prerequisite for Site Plan Review. Chair Gulino replied
39 he was relying on the Sec. 19-6-1.B permitted uses, which states the following are
40 accepted uses, agriculture, and under 4.h, Agriculture Related Use.

41
42 The other point was whether this is a road for tractor or people use, it is a use, and if it's
43 an agricultural use in a Resource Protection District, it requires a permit.

44
45 Mr. Smith feels leaving the gravel base in place is less disruptive then removing it.

46
47 Chair Gulino's interpretation is that it does not require a permit because it does not rise
48 to the level of a catwalk or footbridge and is no more intensive than the recreational
49 uses listed under number 8, page 132.

1 Keeping in mind that this is a Resource Protection Zone, it expected to be protected.
2 The Chair sees the applicant's request is for a very narrow use, light scale or limited
3 impact use. Going back and forth across this area comes under Section 8 page 132
4 and falls short of Section 20 on page 133. Use will not really impact the wetlands.
5

6 There was discussion about alternate tractor access to the field without using the gravel
7 access road. Foot traffic is clearly allowed by Table 19-6-9.8. The tractor uses the road
8 to mow the road and to mow two additional fields, not the blueberry field. Grooming of
9 existing residential lawns and landscaping is allowed (Table 19-6-9.11), but you cannot
10 use a motorized vehicle to access the blueberries. Tractor access to the blueberries
11 can be obtained through existing driveway, without crossing the protection zone. A
12 permit for accessing the blueberry operation could be applied for.
13

14 **CONCLUSIONS:**

15
16 The appellants appeal is granted only to the extent that it objects to the accessing of the
17 back lot for the purposes of running vehicular traffic across that path for the purposes of
18 taking blueberries in and out and/or machinery in and out, but only to that extent that we
19 are granting the appeal. The rest of it is denied. The agricultural use is allowed. Foot
20 traffic is allowed. Tractor traffic is allowed to the extent that it falls within grooming of
21 existing residential lawns.
22

23 Chairman Gulino made a motion that the appellants appeal is granted only to the extent
24 that it objects to the vehicular traffic going across the path to the back lot for agricultural
25 purposes and it is denied with respect to its objection to the conducting of agricultural
26 services, agricultural activities, and agricultural related activities on the back lot in the
27 RA zone. And it is denied with respect to its objection to foot traffic going across the
28 path and it is denied with respect to the objection to the tractor going across that
29 footpath for the purposes of grooming of existing residential lawns and landscaping. Mr.
30 Schwartz seconded. All were in favor.
31

32 The request for a Site Review was denied. Chairman Gulino made a motion that the
33 appeal to the extent that it is requesting that a site plan be required is denied. Mr. Straw
34 seconded. All were in favor.
35

36 2) Review existing rules regarding public participation of the Zoning Board for possible
37 changes and create a Zoning Board work-plan for submission to and approval by the
38 Town Council. After discussion, it was decided that Mr. Smith would draft a work-plan
39 for training and present it at the September meeting.
40

41 **E. Communications – None.**

42
43 **F. Adjournment –** Motion by Mr. Thibodeau to adjourn; seconded by Mr. Straw. All
44 were in favor. Meeting adjourned at 9:52 pm.