

TOWN OF CAPE ELIZABETH, MAINE  
MINUTES OF PLANNING BOARD MEETING

July 16, 2002

7 P.M., TOWN HALL

Present: David Griffin, Chair  
Andrew Charles  
John Ciraldo  
Peter Cotter  
Karen Lowell  
Barbara Schenkel

Absent: David Sherman

Also present was Maureen O'Meara, Town Planner

Chairman David Griffin opened the meeting and asked for a short delay to review new correspondence. He then resumed the meeting and asked for action on the minutes of the previous meeting. With no amendments requested, Mr. Cotter made a motion to accept the minutes. Motion was seconded by Mrs. Schenkel and carried 6 in favor and 0 opposed.

Mr. Griffin reviewed correspondence and proceeded to old business.

**OLD BUSINESS**

**Blueberry Ridge Final Subdivision Review** - Request by Joseph Frustaci for Final Subdivision Approval and a Resource Protection Permit for Blueberry Ridge, a 19-lot subdivision located off Mitchell Rd, Sec. 16-2-4, Final Subdivision Public Hearing, and 19-8-3, Resource Protection Permit Review Public Hearing.

Dave Kamila of Land Use Consultants introduced himself and associate Thomas Emery and presented a summary of changes to the subdivision plan. Most of the changes were in response to issues raised by the Town Engineer and were presented as follows:

1. Due to the size of the project, over 1.05 acres of impervious area, a Stormwater Law permit is required by the DEP. That application has been submitted and is in due process.
2. A stop sign is shown on the plan at the entrance of Blueberry Ridge Road from Mitchell Road.
3. The areas of wetlands impacted by development of Lot #1 are outlined on the final plan.

4. Notes have been added to the plan with regard to silt fencing installed to protect wetlands during the construction of the detention basin. A sewer service connection running from the Flocatoulas property on Mitchell Road had been shown on a previous plan as situated under the proposed Blueberry Road. It has been determined that the location of that connection is incorrect and that detail is removed from the final plan.
5. Foundation drain layouts for all of the lots connecting into the stormwater system have been added to the plans along with a note stating that all the drains will have positive gravity.
6. In the event of encountering ledge in the drainage basins, excavation will involve a layer of clay beneath the loam and seeding. The Public Works Department will have a layout of any ledge sites so that they can plan the proper maintenance.
7. A detail of the wooden guardrail has been provided.
8. Fifteen full sets of plans have been submitted.

Mr. Griffin opened the meeting to a Public Hearing with the request that, because of the number of people proposed to come forward, speakers limit their time to three minutes.

Jane Boulos, 60 Edgewood Road, Cape Elizabeth, purchased her property from Joe Frustaci nine years previous. She knew at that time about plans for further development and looked forward to having access to the Cape Elizabeth community. Currently her access is to South Portland and she considers those neighbors irrational in their dealings with the proposed development. She stated that the city of South Portland had threatened to take away an easement granted her, which is the only access to her property. She finds it disconcerting to reside next to a town that does not consider her best interests and takes random actions which impact her and destroy the fabric of the neighborhood. She feels that South Portland neighbors have made no effort to compromise and are unrealistic toward Mr. Frustaci's right to develop his land within the mandated ordinances of Cape Elizabeth. She believes that the Blueberry Ridge plan is viable and that the traffic impact will not create any safety hazards. She closed with a request that the Board consider making Edgewood Drive a through street into the development so that she may enjoy access to the new neighborhood

Robert Crawford, an attorney representing several So. Portland abutters touched on the issues which have been raised by his clients.

He made reference to ordinance Sec. 16-2-4, Final Subdivision Approval, and stated that final approval would be premature since DEP required permits had yet to be received.

He disagreed with findings on the drainage plan submitted by LUC indicating water currently drains from the area of the proposed subdivision into South Portland in the location of Charlotte Street in South Portland. His clients claim the opposite, and so

contend that the proposed stormwater plan will create a runoff problem rather than reducing one. He noted that the City of South Portland has not committed to accepting runoff from the proposed subdivision system and further legalities may ensue which haven't been addressed.

He cited the time frame and extent of the wetland study provided by Sweet Assoc. for the applicant Joe Frustaci. Mr. Crawford had contacted the Maine DEP and the Army Corp of Engineers and both had stated that they would not rely on wetland studies that were over five years old.

Mr. Crawford opposed the reduction of the fifty-foot setbacks for building envelopes with respect to Sec. 19-7-2, Open Space Zoning. He asked the Board for diligence with regard to accepting that setback reduction considering what was written in the Town ordinance. He pointed out language regarding a building envelope requirement of seventy-five feet from the end of any right-of-way existing prior to 1997. Lot #12 would not meet that requirement with consideration of Charlotte Street.

Also referenced from the ordinance were criteria for vegetative buffers and the requirements to protect existing trees and growth. Mr. Crawford held that stockade fences did not satisfy the ordinance. He stated that an excessive drainage plan would endanger the existing trees.

Mr. Crawford was not satisfied with the traffic study provided. He felt that the study failed to substantiate the impact of traffic from Mitchell Road cutting through to Edgewood Road.

David Sawyer, 10 Charlotte Street, So. Portland, opened by stating that there was no intent by the City of South Portland to cut off access to the Boulos property. He then discussed his concerns with the development, citing first the protection of vegetation during the excavation process for the drainage system. He anticipated extensive clearing and blasting and was concerned that no protection plan was within the plan to safeguard existing trees. He felt that there was little integration of neighborhoods because access into and out of the subdivision was limited, and he pointed out some alternatives to the design layout. He suggested condos as a better use for the area as they presented less impact on the land. He also stated that South Portland neighbors would be in favor of traditional zoning which allows 20,000 sq./ft lots. He questioned Mr. Frustaci with regard to an endorsement granted by the State Planning Office. Mr. Sawyer spoke with Evan Richert of that office and was told that the plan had not been endorsed because it lacked good integration of the neighborhoods. In closing, Mr. Sawyer stated that the proposed development lacked many of the amenities offered in other subdivisions such as cutting envelopes subject to restrictive clearing.

Lee Bumsted, 58 Goudy Street, South Portland, had specific questions for Mr. Frustaci with regard to the protection of existing trees behind her property, and the impact of a proposed fence shown on the plan as a buffer between her property and the subdivision. She felt that there had been insufficient explanation as to the decision to decrease the 50'

setback requirement in the zoning ordinance. In her opinion, all consideration was paid to the developer and little to the abutting neighborhoods.

James Cannon, 12 Phillips Road, South Portland, had concerns about Red Oak Drive and its continuance through Edgewood Drive and to South Portland. He considered the possibility of that through way to be a hazard and of little benefit to the South Portland neighborhoods. He hoped that the Board would approve a subdivision which would address the concerns of the inhabitants outside as well as inside the development.

Robert Crawford stepped forward to reference a letter from Mr. Jordan, the City Manager of So. Portland, with his response to issues raised by Mr. Bushey, a civil engineer hired by South Portland abutters to do an independent drainage study.

Julianne Eberl, 54 Edgewood Road, South Portland, stated that her neighborhood is an excellent example of cluster housing. She noted the size, age, and quality of the lots and their dwellings and the preservation of mature trees. She was a proponent of the concept of cluster housing and would welcome a new neighborhood if she felt it met the standards as represented in the Cape Elizabeth ordinances.

With no other speakers, Mr. Griffin deemed the hearing closed and granted an opportunity to Mr. Frustaci to respond to questions raised during the public hearing.

Mr. Frustaci introduced himself as the developer of the Blueberry Ridge subdivision. He stated that he had submitted a plan to John Delvecchio at the State Planning Office for review. The plan presented at that time showed a connection to Edgewood and Charlotte Street, but that plan was scrapped because those streets have since been vacated. With regard to the existing trees in the buffer area, Mr. Frustaci stated that Tom Emery of Land Use Consultants had been very cautious in his predictions of impact on existing trees, but great consideration would be given to their protection. In response to Mr. Sawyer's request for restrictive cutting buffers outside of building envelopes, Mr. Frustaci replied that some of those areas are too narrow and the space is necessary for construction. With regard to Lee Bumsted's concern about a fence buffer, Mr. Frustaci explained that the plan provided buffering options of either a fence or vegetation. He was prepared to work with abutters and provide a buffering plan which would be acceptable to them. In response to the issue of access to and from the development, Mr. Frustaci pointed out the easement between lots #5&6 which leads out Edgewood Road in South Portland.

Tom Emery of Land Use Consultants addressed the issue of access and stated that the project was a victim of "double jeopardy." He referenced the accusations of South Portland abutters that there was no integration between the neighborhoods when at the same time the city of South Portland discontinued access connecting those neighborhoods.

He warned that single access created dead end neighborhoods which cannot contribute and interact with other neighborhoods. He noted that he had a profile of an existing neighborhood with multiple road connections to a busy street and that neighborhood had

no record of unsafe traffic conditions. He reiterated Mr. Frustaci's desire to work with abutting property owners to achieve a buffering design of their choice.

Mr. Frustaci stepped forward to explain the section of the Open Space Zoning ordinance which allows options for the Board to consider with regard to setback rulings. Under those provisions the Board is allowed to grant modifications with respect to subdivision design. He stated that a request of waiver for the side and rear setbacks is not unique to his subdivision and has been exercised before with other developments.

Mr. Griffin opened discussion to the Board.

Mrs. Schenkel asked Mr. Kamila if he would comment on the letter received 6/30/2002 from Mr. Bushey to David and Elizabeth Sawyer regards drainage.

Mr. Kamila explained that the letter dealt primarily with drainage from proposed lots 11,12,&13 which border Charlotte Street in So. Portland. He pointed out on the plan the drainage area at issue and color coding which depicts the decrease in drainage area impacted once the stormwater system is in place. Subsequently, most of the area will drain into the subdivision stormwater system resulting in a significant reduction of drainage within that watershed. He stated that most water in that area currently infiltrates into the ground and that changes pursuant to the development will be minimal and not create any increase of drainage toward South Portland. Therefore, he felt a drainage easement along those properties unnecessary.

The letter questioned ownership of the discontinued portion of Charlotte Street and the means of enforcement to prevent through traffic from the development. Mr. Kamila responded. He referenced a letter from So. Portland City Manager Jeff Jordan stating ownership by the city. Legally the street doesn't exist but physically there is nothing in place to prevent traffic accessing So. Portland from the development through Edgewood Road. The developer has no plan which would police through traffic and was of the opinion that South Portland had a greater desire to halt that occurrence and so would be responsible for enforcing those restrictions.

Mr. Bushey had asked whether or not the So. Portland Engineering Dept. had signed off on the project and Mr. Kamila stated that they had not been approached. He again referenced a response from Mr. Jordan stating that there are no provisions for that type of sign off.

In response to a request for a wider buffer along the back of lots 11,12, & 13, Mr. Kamila noted a buffer of 25' which is wider than the other lots in the development. He commented that Mr. Frustaci was sensitive to the issue of preserving trees, but without knowing the building footprint of proposed houses, it was difficult to ascertain what would happen to existing trees.

With regard to test pits in the detention basin area to detect ground water and rock depth, Mr. Kamila said that test pits had been dug in the vicinity of those basins. A home which previously existed at that site had a well dug. No ledge was discovered at that time.

Mr. Charles asked about the topography of the watershed area of concern to So. Portland abutters and how that would change upon implementation of the stormwater system. Mr. Kamila replied that the change would be minimal. Grading would be done to accommodate the building envelope on lot #11 but the building footprint probably would be well away from the area in question. Mr. Kamila responded that although a spot elevation has never been done, he felt the Charlotte Street catch basin was higher than the surrounding area. He was of the opinion that water mostly ponded in the general area and utilized the So. Portland catch basin only with extreme runoff. He stated once again that the drainage in the Charlotte Street area would be significantly reduced with the implementation of the proposed stormwater system.

Ms. Lowell asked Mr. Kamila to explain the DEP review process and whether or not it entailed a site visit which would also include the So. Portland properties. She also made reference to a letter from Lisa Flocaoulas with concerns about the swale running approximate to her property. Mr. Kamila explained that a ditch exists at the corner of the Flocaoulas property and continues into an open swale and cross culvert at Mitchell Road. Water from the catch basin could flow into that ditch and ultimately drain out the swale to the Mitchell Road site, but only in the event of a 100 year storm which is of the magnitude of a hurricane. With regard to the DEP review, Mr. Kamila explained that there is a 60 day period to make a determination of completeness and make a ruling on the application. No substantive review had been received and all of the issues raised by the So. Portland neighbors had been submitted for comment.

Mr. Charles suggested that the developer obtain a spot elevation of the Charlotte Street area and review the recommendations made by the Town Engineer with regard to additional draining being proposed in that area. He thought it would help clear up questions which the Board might have relative to the drainage issue and satisfy the concerns of the abutting properties as well. Mr. Kamila agreed to consider additional drainage in the contested area but still maintained that the effort would be overkill. He noted that creating an additional berm would impact trees

Mr. Frustaci stepped forward to add to that statement referencing the abutters concerns for trees and vegetation buffers. He maintained that creating a berm would destroy the trees.

Mrs. Schenkel asked on behalf of Lisa Flocaoulas about the impact construction of the catch basins might have on trees on her property. Mr. Frustaci stated that construction would be far enough away to not affect the root systems of her trees.

Mr. Griffin asked Mr. Frustaci to confirm for the record that the buffer design depicted on the plan was a representation and not definite. Mr. Frustaci concurred and said that a note included on the plan stated that fencing and vegetation were both options.

Mr. Griffin stated that the Board tentatively had decided to hold an executive session. A date of August 6<sup>th</sup> was chosen.

With no further discussion, Mr. Cotter made the following motion for the Board to consider:

**BE IT ORDERED** that, based on the plans and materials submitted, the application of Joseph Frustaci for Final Subdivision Review and a Resource Protection Permit for Blueberry Ridge, a 19-lot subdivision located off Mitchell Road, be tabled to the regular September 17, 2002 meeting of the Planning Board.

Motion was seconded by Mrs. Schenkel and carried 6 in favor and 0 opposed.

## **NEW BUSINESS**

**Heritage Court Subdivision Amendment** - Request by Laura H. McGrath for an amendment to the previously approved Highlands Subdivision to adjust the building envelope for the lot located at 4 Heritage Court Rd, Sec. 16-2-5, Amendment to Previously Approved Subdivisions.

Mr. Charles recused himself.

Charles Gilbert from Windham introduced himself as the real estate listing agent who handled the sale of property from Ron and Stacy Hodge to Paul and Laura McGrath.

Mr. Hodge purchased the property in 1997 and in 1999 took out a building permit for deck and hot tub. Mr. Hodge took the measurements, which he believed to be within the building envelope of the property. A survey taken at the time of the property transfer from Hodge to McGrath showed a corner of the deck and the entire hot tub to be outside the building envelope. Dave Logan of Al Fricke Assoc. was hired to outline the wetlands so a determination could be made with regard to the setbacks. Mr. Logan stated that methods for measuring wetlands had changed over the last eight years and a more accurate survey established a ten-foot buffer from the structures in contention. The hot tub is within a fully enclosed structure situated on a cement pad and therefore cannot be easily relocated. The request would enlarge the building envelope to negate the encroachment.

Mr. Ciraldo stated that after reviewing the comments from the Town Engineer and considering the fact that there would be no adverse affects on the wetlands, he was in agreement with the request.

Mrs. Schenkel made the following motion for the Board to Consider:

## **Findings of Fact**

1. Paul and Laura McGrath are requesting an amendment to the previously approved Highlands Subdivision to revise the building envelope for the lot located at 4 Heritage Court, which requires review under Sec. 16-2-5, Amendments to Previously Approved Subdivision Plans.
2. The revised building envelope will provide a 10' wide setback from the adjacent wetland.
3. The application substantially complies with Sec. 16-2-5, Amendments to Previously Approved Subdivision Plans.

**THEREFORE, BE IT ORDERED** that, based on the plans and materials submitted and the facts presented, the application of Paul and Laura McGrath for an amendment to the previously approved Highlands Subdivision to revise the building envelope for the lot located at 4 Heritage Court to accommodate the house and hot tub be approved.

Motion was seconded by Ms. Lowell and carried 5 in favor and 0 opposed.

**Golf Course Zoning Amendment** - Request by the Town Council to review a proposed amendment to the Zoning Ordinance that would list golf courses existing as of July 1, 2002 as a permitted use in the RA and RB District and add a definition of golf course, Sec. 19-10, Zoning Ordinance Amendment Public Hearing.

Mr. Griffin asked Maureen O'Meara to summarize the request. She explained that the Purpoodock Club is undertaking a master planning process and approached the Code Enforcement Officer to discuss what is permitted on their property. The golf course proper is located in the RA district and another property on the west side of Spurwink Ave. is in the RB district. It was discovered that golf courses were not listed as a permitted use for either of these districts. A definition needs to be added to the ordinance which will encompass all the elements of use within its operation. The Purpoodock Club had requested a modification of the definition as it was drafted in an earlier Planning Board workshop to specify at least 3 holes, instead of 9 holes. A second revision is to strike a restricted date of July 1, 2002, for existing golf courses in the RB District. The language would impact pending plans for the property located in the RB District, which currently holds no golf course.

John Mitchell, representing the Purpoodock Club, explained to the Board that the request to lessen the definition to 3 holes was with regard to the smaller parcel in the RB District which might accommodate a smaller "pitch and put" type application.

Mr. Ciraldo considered that the changes in definition opened the door for private golf courses within the RB district. Ms. O'Meara explained that the RB District is located on large tracks of land most capable to handle development, as identified in the Comprehensive Plan.

Mr. Griffin opened the Public Hearing.



John Green, property manager for Sprague Corporation, voiced his approval of the Purpoodock Club expansion and was supportive of the permitted use change within the ordinance. He felt golf courses an attractive and compatible use for large parcels, which might otherwise fall to residential development. He also requested that the golf courses permitted in the RA District not be limited to existing golf courses only.

Mr. Griffin closed the public portion of the meeting.

Mr. Charles was in favor of opening up golf courses in general as a permitted use in the RA and RB district. Other members of the Board had issue with what the full impact of that permitted use. Mrs. Schenkel hesitated with regard to the 3-hole allowance, and Mr. Ciraldo felt that not enough analysis had been done. He was sympathetic to the fact that the Purpoodock Club needed the permitted use issue resolved, but wasn't prepared to arbitrarily grant golf courses a permitted use in the RA district.

Mr. Griffin asked Ms. O'Meara about procedure should the Board accept the ordinance amendment as written. She explained that, at some future point, if an applicant wished to pursue the development of a golf course in the RA District, then they would have to approach the Town Council for revision of the ordinance

Mr. Mitchell asked Maureen to clarify the use of the July 2002 date written into the ordinance. She explained that the date provided a restrictive clause relative to the RA district, but allowed the Purpoodock Club to exercise options for their parcel in the RB district, because there was no date limitation in the RB District.

Mr. Charles shared Mr. Ciraldo concerns. He felt the language of the ordinance too partial to one landowner.

Mr. Cotter was comfortable with the ordinance as written and voted to move forward and complete the task as presented in the workshop. Ms. Lowell agreed.

Ms. Lowell made the following motion for the Board to consider:

**BE IT ORDERED** that, based on the materials submitted and the facts presented, the Planning Board recommends the Golf Course amendment to the Zoning Ordinance that would make golf courses a permitted use in the RA and RB Districts and add a definition of golf course.

Motion was seconded by Mr. Cotter and carried 4 in favor and 2 opposed.

With no further business, motion for adjournment was made by Mr. Cotter and seconded by Mr. Charles. Motion carried 6 in favor and 0 opposed.

Meeting adjourned 8:55PM.

Respectfully submitted,

Barbara H. Lamson, Minutes Secretary