

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD

October 18, 2005

7:00 pm Town Hall

Present: David Sherman, Chair  
David Griffin  
Jack Kennealy  
Barbara Schenkel  
Peter Hatem  
Paul Godfrey

Absent: John Ciraldo

Also present was Maureen O'Meara, Town Planner.

Mr. Sherman called the meeting to order and asked the Board for comments on the minutes.

Mr. Godfrey made a motion to accept the minutes.

Mr. Kennealy seconded the motion. 5 in favor, 0 opposed, 1 abstained(Schenkel)

Mr. Sherman reviewed correspondence.

CONSENT AGENDA

**HIGH SCHOOL FIELD LIGHTS** - The Town of Cape Elizabeth is requesting a de minimus change to install different lighting for the athletic field located behind the High School (U21-12), Sec. 19-9, Site Plan Amendments.

Jim Croft, representing the Lighting Upgrade Committee, stated there has been no change from what has been provided at the Planning Board Workshop.

Mr. Sherman reminded the Board that, for substantive review, the item would have to be removed from the Consent Agenda.

Mrs. Schenkel asked about the concerns of Chief Williams and the use of the fields for anything other than athletic activities.

Mr. Croft stated that, at the Planning Board Workshop, it was stated that only the professionals from the School Department and Community Services would decide who may use the field and will work with Chief Williams for guidelines for uses of the field.

Mr. Sherman asked for a motion.

Mr. Griffin made the following motion.

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Town of Cape Elizabeth to amend the School Renovations Site Plan to upgrade the lighting at the athletic field located behind

the High School, located at 345 Ocean House Rd, be approved as a Consent Agenda item.

Mr. Hatem seconded the motion. 6 in favor, 0 opposed.

**BROTHERS WAY PRIVATE ROAD APPROVAL** - Stephen Murray would like to request a 1-year extension of the Resource Protection Permit granted in conjunction with the Private Road approval for Brothers Way, located off Fowler Rd (U20-6, 11-1), Sec. 19-8-3, Resource Protection Permit.

Mr. Sherman stated that this did not require a presentation from the applicant. He asked if any Board member wanted substantive discussion. Hearing none, he asked for a motion.

Mr. Godfrey made the following motion.

BE IT ORDERED that, based on the materials submitted and the facts presented, the application of Stephen Murray for an extension of the time limit for the Resource Protection Permit needed to construct Brothers' Way, a private road off Fowler Rd, be approved.

Mr. Kennealy seconded the motion. 6 in favor, 0 opposed.

**GOLDEN RIDGE SUBDIVISION AMENDMENT** - Jeff and Vicki Kennedy are requesting a de minimus change to the Golden Ridge Subdivision approval to add a note that allows a lesser amount of fencing and landscaping adjacent to the greenbelt trail, with the consent of the Conservation Commission, (U17-50), Sec. 16-2-5, Subdivision Amendment.

Mr. Sherman stated that the Conservation Commission had review this request and has indicated approval for this request. A Conservation Commission member was present for any questions. Hearing none, he asked for a motion.

Mr. Kennealy made the following motion.

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the request of Jeff and Vicki Kennedy for an amendment to the Golden Ridge Subdivision approval to allow the Conservation Commission to make a field determination of the amount of fencing and landscaping needed adjacent to the greenbelt trail be approved as a Consent Agenda item.

Mr. Hatem seconded the motion. 6 in favor, 0 opposed.

## NEW BUSINESS

**INN BY THE SEA SITE PLAN AMENDMENTS** - The Inn by the Sea is requesting amendments to the previously approved site plan to reconfigure the entrance, to adjust the building addition, to construct a mechanical building, and to establish a temporary construction entrance for the Inn located at 40 Bowery Beach Rd, (U17-39/40), Sec. 19-9, Site Plan Amendment Completeness and Public Hearing.

Stephen Bradstreet, Aquarion Engineering Services, stated they had a number of items to be revised. They had upgraded the appearance of the entrance, building changes,

mechanical changes and changes to the construction entrance to the site. They are proposing a one way in and one way out with an island and considerable landscaping upgrades with granite pavers. The additional building modifications include slight elevation changes and slight footprint changes with the main addition to the Inn. They are looking to locate a mechanical outbuilding with a cooling tower where the existing trash building is located. He stated there would be no loss of parking. He discussed the construction access and the Inn is still going to maintain business in the cottage area. The grassed over gravel entrance, which is supposed to be emergency access, will be widened and paved temporarily for patrons to enter while work is taking place on the main entrance. They also increased the radiuses from 20 to 25' and widened the road from 16 ft to 18 ft. He addressed comments concerning light fixtures that were not on the plans due to a CAD issue and has been rectified. Stop signs and one-way signs will be added to the plans.

Scott Teas, THR Architects, stated that they had an option to put the mechanical building on the roof or a separate building. They decided on a separate mechanical building. They have developed a foundation system where a perforated fence is around the mechanical building, which is decibel rated. Only the fence will sit on the septic system chamber. He addressed the handicapped accessibility, which has State Fire Marshall acceptance.

Barry Hosmer, Landscape Architect, stated the landscape plan and entrance drive have been changed to create a more grand and formal feel. The proposal contains a wider entrance drive flanked with 6 x 6 columns and heavily landscaped berms on each side of the entrance. There will be a split face granite curbing and he gave an overview of the plantings. There will be an entrance island and the existing fountain.

Mr. Bradstreet addressed parking and the original approval 176 spaces. Staff had noted that there should only be 148 parking spaces as this was contingent on the Library Room and the Seal Cove Room being closed during functions and thus availing 28 spaces. Since these rooms have been changed to guest rooms, the parking should be dedicated to those guests. Mr. Bradstreet believes there still should be 176 spaces for function space.

Mr. Board stated that the Board needed to determine if the item was complete.

Mr. Griffin stated that he had a minor involvement in the project supplying some equipment and financial gain would be very small.

Mr. Sherman asked Ms. O'Meara that if a Board member would receive financial benefit from a project, should they recuse themselves?

Ms. O'Meara stated the law states you must have a 10% or greater financial interest. She told Mr. Griffin he should disclose this information to the Board and they would decide if he could participate or not.

Mr. Hatem asked Mr. Griffin if he felt he would have a financial gain of 10% or more. He also asked if he had a bias on the project.

Mr. Griffin stated no.

The Board determined that he would be able to participate.

Mr. Sherman stated that the Board needed to determine completeness.

Mrs. Schenkel made the following motion.

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of HMH Ltd Partnership for Site Plan amendments to reconfigure the entrance, adjust the building addition, construct a mechanical building, change the landscaping and establish a temporary construction entrance for the Inn by the Sea, located at 40 Bowery Beach Rd be deemed complete.

Mr. Kennealy seconded the motion.

Mr. Sherman opened the Public Hearing. Hearing none, he closed the Public Hearing.

Mr. Godfrey asked Mr. Bradstreet about the location of the new mechanical building and the reduction of the aisle width. On the plans it states “scale as noted”, however, there are no scales on the plans. He asked about the materials and layout detail for the construction entrance.

Mr. Bradstreet stated it would be 20 ft wide and constructed with minimum of 12” of 1.5-2” size crushed stone.

Mr. Godfrey asked about the location of the mechanical building in relation to the septic chamber.

Mr. Bradstreet described a screening fence around a cooling tower. The cooling tower foundation is outside the envelope of the septic field. TFHR Architects have come up with a design that is acceptable to Al Fricke, who designed the septic system.

Mr. Sherman stated that there was a draft motion to table. He asked the Board if they wanted to table the application or move forward for approval.

Mrs. Schenkel stated that she wanted to go forward with approval with conditions.

Mr. Sherman asked Ms. O’Meara if she would offer comment.

Ms. O’Meara stated that several items raised tonight were not on the plans in front of the Board. They were shown on plans brought that evening. She reviewed the septic system with the Building Inspector, who stated this would be an issue. The Public Works Director is strongly opposed to cobbles in the right-of-way. When the Seal Cove Room and the Library Room were converted to hotel rooms during prior approval, the applicant added parking to accommodate the new hotel rooms. When the Board approved the outdoor functions, there was an agreement made based on the shared parking concept that certain facilities could be closed and those parking spaces could be used for the outdoor events. Those facility rooms are now being used as hotel rooms. On behalf of Town Staff, they should have an opportunity to review revised plans.

Mrs. Schenkel asked if there was off-site parking available.

Ms. O'Meara stated that they had amended the Ordinance to provide for that, and the applicant chose not to come back before the Board to amend their approval to provide for off-site parking.

Mr. Sherman stated he was inclined not to approve the application that evening and asked the applicant their thoughts on that.

Mr. Bradstreet stated that the plans in front of the Board do not show cobbles in the right-of-way and although the site plans are not explicit about the cobbles, they do refer to the landscape plan. He does have the corrected lighting plans, which were a printing error. He is confident about the septic and mechanical building and will get the letter from Albert Fricke. He cannot respond to the parking calculations, he will look back at the calculations and determine the correct number. The applicant would like approval for that evening so they could start prior to winter construction.

Ms. O'Meara stated from her information, the Inn had already applied for a building permit and withdrew the application as they were not going to start construction until next year.

Tim Levine, Olympia Development, stated it was correct that construction would not start that fall. He stated they still want to proceed with the project

Mrs. Schenkel asked for clarity on when the project was starting.

Mr. Levine stated October, 2006.

Mrs. Schenkel stated that it was not paramount that there be approval that evening.

Mr. Levine stated that was correct and if the Board was not confident granting approval that evening, they could wait until November.

Mr. Sherman asked the Board for a motion to consider.

Mr. Griffin made the following motion.

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of HMH Ltd Partnership for Site Plan amendments to reconfigure the entrance, adjust the building addition, construct a mechanical building, change the landscaping and establish a temporary construction entrance for the Inn by the Sea, located at 40 Bowery Beach Rd be deemed tabled to the regular November 15, 2005 Planning Board meeting.

Mr. Godfrey seconded the motion. 6 in favor, 0 opposed.

#### OTHER BUSINESS

**Stonybrook Rd/Ocean View Rd Paper Street Vacations** - The Town Council has asked the Planning Board to provide advice on the possible vacation of paper streets adjacent to Town-owned land located off Stonybrook Rd and Ocean View Rd, Public Hearing.

Mr. Sherman asked the Town Planner to summarize this request.

Ms. O'Meara gave an explanation of paper streets. The law on paper streets states that everyone who owns a lot on a recorded plan has a right to the paper street, regardless if their lot fronts the paper street. It is a two-part action to vacate a paper street. The Town must abandon its rights to the street. This gives the other lot owners one year to preserve their rights or not. Tonight they are discussing the Town abandoning its right. If it is vacated, the street gets divided amongst the abutters. In the case of Stonybrook Rd, there is a lot owned by the Town, which has paper streets on either side of it. If both streets are vacated, it will bring the Town's lot size above 10,000 sq. ft., which is the minimum buildable lot size in Cape Elizabeth. This does not mean the lot is buildable and may be unbuildable due to issues such as wetlands or lot shape. They do not have that information on this lot. The Town Council has not made a decision on whether they will sell the lot. On Ocean View Rd, the paper street also abuts a Town owned parcel, and has a trail on it. If this street is vacated, it would bring the lot above 10,000 sq. ft in size. There is no information at this time that the lot is buildable. There is also no commitment from the Town Council to sell it or not.

Mr. Hatem stated the Planning Board's role is purely advisory. Ultimately any decision will be made by the Town Council.

Mr. Sherman opened the Public Hearing.

Mr. Sprague Simonds, 71 Stonybrook Rd, is adjacent to the paper street. He stated he is trying to maximize the value of his property. He was advised by his realtor to ask the Town Council to vacate the paper street because his driveway is on the paper street. He wants to gain full ownership of the driveway that he already uses. He was also hopeful to build a small garage for his car. He does not have plans for a large addition and respectfully asks the Board to make a recommendation to vacate the paper street. Susan Payne, 72 Stonybrook Rd, presented a petition signed by 70 people urging the Planning Board not to make any recommendations to open the land up to development. She read the letter that accompanied the petition. The concern they are expressing is the possibility that the lot may become buildable. The reasons she wants the land to remain open space. If the land is vacated, there is no assurance that it will remain open space, and opened space is hard to obtain as it is. The people who signed the petition are from 3 different streets, not just the Stonybrook Rd.

Mr. Hatem asked if the petition was only for the Stonybrook Rd.

Ms. Payne stated it was.

Bill Brownell, 9 Cedar Ledge Rd, wants the space protected. As an abutter, he does not wish that the space be vacated.

Dan Chase, 26 Stonybrook Rd, stated it is hard to know what they are responding to. He is afraid that if they don't speak tonight, there might not be an opportunity before the lot is developed. To think of that lot being developed is a mockery to the Resource Protection Ordinances. For the Town to sell the lot, it is making the implication that it is a buildable lot, because no one would want to buy it otherwise. For that lot to be developed, it would require thousands of cubic yards to make it buildable and thus covering thousands of sq. ft. of wetlands. This would effect the drainage course for a good portion of the neighborhood. It also contains a vernal pool. There is a continuation of a practice in the Town in which people are not denied a Resource Protection Permit, even if the Conservation Commission (of which he was a member for six years) recommend against it. He read from an article online from the University of New Hampshire concerning stormwater runoff. He stated he has nothing against Mr. Simonds, and can sympathize with his want for a garage. If he can present a small plan without hardly any disturbance of ground cover, he would be in favor.

Bill Riley, 5 Cedar Ledge Rd, is confused and concerned with what the Town is up to. He sees no reason to disturb the "status quo". He doesn't see any reason to change anything. Mr. Simonds can park his car as he is now. He spoke with a hydrologist and he stated the lot is a wetland over 50 weeks of the year. If developed, it would need thousands of cubic yards of fill. This would move the wetlands, raise the water table and neighbors' basement would flood. The hydrologist stated that they could culvert the area, but that would create soil erosion downstream. He recommends the proposal is nonsense.

Jenn Caswell, 80 Stonybrook Rd, is a mother of 8 & 10 yr olds, who play on the lot. It is wet there most of the time and there is a vernal pool there. This lot is not buildable. If it was ever built on, it would ruin a piece of property. She would be in favor of letting him have a small garage and leaving the rest. She submitted pictures of how wet it is and pleaded with the Board to not let the lot be vacated.

Michael Mowles, 423 Ocean House Rd, Town Councilor, did not come to speak for the Town Council, but was there for the discussion of why the Town Council asked for this to be discussed. He stated there were a lot of questions of what the Council was thinking of, what are they intending. He assured them that the Council has no intention of developing that lot. He stated again that he doesn't speak for the Council officially, but he would never vote to sell that lot. He has been to the lot, walked the lot, and it is one of the wettest lots around. His presence is for Mr. Simonds, whom he thinks has a legitimate request for land that is not otherwise being used, and to assist him with a setback for his potential garage and driveway. He felt this was a fair request of the Planning Board and maybe the recommendation after discussion could be to vacate one of the two streets. The Town Council's only intention was to assist Mr. Simonds without the intention of developing the lot as it is soaking wet and he pledged that he would never vote to develop that lot. He stated that no one had really spoken concerning the other lot. The other lot, with the vacation of the street, would potentially make it a buildable lot. The Town has gone through several lot sales through the last couple of years and it was rather unpleasant process, and he does not foresee them selling anything again in the near future. That particular lot is level, dry, and if deemed necessary as part of a trail system,

they wouldn't sell that either. That vacation would give the Town the ability to do something, if it had to, further down the road. He thanked the audience for coming down and putting the petition together because town government and democracy only work when everyone participates.

Mr. Kennealy asked if he could ask a question.

Mr. Sherman stated he would like to finish the Public Hearing phase.

Mr. Simonds wanted his neighbors to know that he did not want the land built. A huge part of the appeal for buying the property was the beautiful view and use of the land. When he asked a year ago to vacate the paper street, he had no idea there was another paper street on the other side of the property, making the lot buildable. He didn't petition for the other street to be vacated. His assumption was when he bought the house, the land would never be developed. He thought there would be an opportunity for the Town to realize some tax revenues if the paper street was vacated as he would be paying taxes on the increased land value and possible garage. He asked that maybe they could consider vacating just one of the paper streets.

Bob Chiozzi, 69 Stonybrook Rd, stated if one paper street is vacated, it is only a short time before the other paper street would be vacated at the request of developers. Housing prices are outrageous as indicated by recent sales of homes and that piece of property could be worth a lot of money to a developer. Although this is wetland, developers build on them all the time. This would be a disaster to the neighbors due to water overflow, as well as the loss of the asset of the land. When he went to the neighbors with the petition, not one refused to sign. He stated Mr. Mowles will not be on the Town Council forever and cannot guarantee it will not be built on. Mr. Lemke has lived on Stonybrook since 1947 and was dumbfounded that anyone would want to take down the woods. He urged the committee not to recommend the vacation of the paper streets.

Mr. Sherman closed the Public Hearing and thanked the Public for coming to the meeting.

Mr. Kennealy asked Mr. Mowles what the genesis was for the request from the Town Council to vacate the Ocean View Rd paper streets.

Mr. Mowles stated it was looked at because the Town Council asked the Conservation Commission to look at the town owned land that was not needed to be on the tax roles. That was one of the sites that could bring revenue to the Town if it was desperate enough. He stated again he was not speaking officially for the Town Council, but he was at that meeting and that was his recollection. They all realized Stonybrook Road to be wet as a sponge and their intention was never to sell or develop that lot, just vacate the street as an accommodation for Mr. Simonds. He appreciates Mr. Chiozzi's and the other comments. He is not a big fan for permanent easements but believes this lot would be a good candidate for a permanent easement. He stated he did not come to the meeting to speak.



Mrs. Schenkel suggested that if the lot is not buildable, then perhaps the neighbors negotiate with the Town to buy the lot.

Mr. Hatem suggested that the Town Council sell just enough land to make Mr. Simond's driveway legal and at the same time convey a permanent easement on the lot.

Mr. Godfrey thinks it is the duty of the Planning Board to look and provide insight. He believes the potential for the lot to be buildable is real. The most proactive thing they can do as a Planning Board say no to vacating the paper street.

Mr. Griffin asked if it should be tabled as he hasn't walked the site and is not familiar with it.

Mr. Sherman has been to the area many times and is convinced this lot is not buildable. He would only be in favor of vacating one of the Stonybrook paper streets if the Town would consider a permanent easement on the remaining land.

Mr. Mowles acknowledged the Public Hearing being over and stated he would be brief. He believes this would be a perfect opportunity for the Land Trust to take over the land and will propose that to the Town Council.

A member of the audience asked if she could speak.

Mr. Sherman stated no because the Public Hearing was closed. The Board was willing to allow a Town Councilor to speak who has given the Board some guidance on what the Town Council may be willing to do.

Mr. Kennealy stated the neighborhood does not want any changes and cited what happened to a paper street in his neighborhood. The abutters of Stonybrook Rd do not want the Town to vacate the street and that is what he recommends.

Mr. Sherman stated that there appear to be two different proposals before the Board. One is to recommend no vacation of either paper street on Stonybrook Rd. or 2; that only one street is vacated with a permanent easement.

Mr. Hatem stated that it appeared that they could accommodate Mr. Simonds and the neighbors with the suggested easement.

Mr. Kennealy stated the Town did not have to give the land to the Land Trust, just a conservation easement.

Mr. Sherman asked for a motion.

Mr. Hatem made the following motion.

**1<sup>st</sup> Motion**

Moved, that based on materials reviewed and the facts presented, the Planning Board recommends to the Town Council that the paper street shown on the map, abutting the west side of the Stonybrook Road, be vacated with the condition that the sale of all or part of the remaining lot be encumbered by a permanent condition or easement restricting development to addition to the adjacent property.

## **2<sup>nd</sup> Motion**

Moved, that based on the materials reviewed and the facts presented the Planning Board recommends to the Town Council that the paper streets shown on the map abutting the east side of Stonybrook Rd., not be vacated.

Mrs. Schenkel seconded the motion.

Mr. Kennealy suggested an amendment on the first motion that the street be vacated only if the Town owned lot be protected by a conservation easement beforehand.

Mr. Hatem so amended and Mrs. Schenkel seconded the amendment. 6 in favor, 0 opposed.

Mr. Sherman asked if any Board member would like to discuss vacating Ocean View Rd.

Mr. Hatem asked Ms. O'Meara if there was any good reason to vacate Ocean View Rd. His motion will be to not vacate it and he sees nothing to suggest this is a good idea.

Ms. O'Meara stated the Conservation Commission reviewed the list of Town owned properties at the request of the Town Council. They refused to recommend the sale of town property but they would not object to the disposition of some property. Ocean View was a lot that they recommended preserving as there is an existing trail that is being used to access the rear land. This trail could be an important link for future trails. This is important as this part of town does not have a lot of town owned open space.

Mr. Sherman recalled from the workshop that there could be a condition that with any sale of the new lot created would include an easement for the Greenbelt Trail.

Ms. O'Meara stated that the Board should be aware of the full range of options. This lot appeared dry and could be worth \$120,000. The Town Council implemented a policy that when the Town sells surplus land, a portion of the money goes into a town acquired property fund. This could help buy land better suited for the Town.

Mr. Hatem asked if the abutter had submitted any comments.

Mr. Sherman stated he did not believe there any comments received on this paper street.

Mrs. Schenkel asked the size of the lot.

Ms. O'Meara stated 8,662 sq. ft. If the paper street is vacated, approximately 2,750 sq. ft. will be added to the lot for a total size of 11,000 sq. ft., potentially creating a buildable lot.

Mr. Griffin thinks it eliminates some town owned land and could assist the Greenbelt. He would recommend vacating the street with an easement.

Mr. Chiozzi asked to speak and Mr. Hatem clarified that the Public Hearing for street vacations was closed.

Mr. Griffin made the following motion.

BE IT ORDERED that, based on the materials reviewed and the facts presented, the Planning Board recommends to the Town Council that the paper streets on Ocean View Rd be vacated and an easement for greenbelt access for the Town be reserved.

Mr. Godfrey seconded the motion.

Mr. Sherman asked Ms. O'Meara if the motion was clear enough.

Ms. O'Meara stated that usual pedestrian easement would be used and add that the easement would extend the full length of Baker Street.

Mr. Sherman asked to include the amendment.

Mr. Kennealy seconded the amendment.

Mr. Hatem clarified what the easement actually meant to current owner and future owners. He also asked about incorporating an easement over the back corner of the town lot to create clear access to the rear. The Board concurred.

Mr. Griffin stated that the easement will transverse the presently owned land.

Ms. O'Meara stated that she did receive phone calls on Ocean View Rd, but no one sent any letters or email.

Mr. Sherman stated there was a motion and was seconded. He called for a vote. 5 in favor, 1 opposed(Hatem).

Mr. Sherman asked for a motion to adjourn.

Mr. Hatem made a motion to adjourn.

Mrs. Schenkel seconded the motion. 6 in favor, 0 opposed.

Meeting adjourned at 8:55 pm.

Respectfully submitted,

Laurie Palanza  
Minutes Secretary