

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

January 17, 2006

7:00 p.m. Town Hall

Present: David Sherman, Chair
Paul Godfrey
John Siegfried

Peter Hatem
Jack Kennealy
Barbara Schenkel

Absent: David Griffin

Also present was Maureen O'Meara, Town Planner.

Mr. Sherman asked if there were any corrections for the Board

Mrs. Schenkel asked that comments made from Mr. Ciraldo be added.

Mr. Sherman stated they could table the minutes to the next meeting and have the tape reviewed. The Board was in agreement.

Mr. Sherman reviewed correspondence and stated that a consent agenda item had been removed from the original agenda. He asked if the Board would take issue with reversing the two agenda items that evening, as the second item would be very quick.

Mr. Godfrey made a motion to reshuffle the agenda.

Mr. Kennealy seconded the motion. 5 in favor, 0 opposed. (Mr. Hatem arrived at 7:15 p.m.)

NEW BUSINESS

Tall Pine Sewer Pump Station - The Town of Cape Elizabeth is requesting Site Plan Review and a Resource Protection Permit to construct a new pump station as part of sewer rehabilitation work in the area of Ocean House Rd and Maple Lane, Sec. 19-9, Site Plan Completeness, and Sec. 19-8-3, Resource Protection Permit.

Steve Harding, Town Engineer, gave a brief overview to the layout of the project. They have designed a pump station with a force-feed gravity line where the flow would proceed via a pressure system. They will be relocating a few storm pipes, and a small driveway access will allow Portland Water District to access and maintain the pump station. There will be a mixture of landscaping surrounding the pump station consisting of shrubs and trees. There is a RP1 Resource Protection Permit, which is why they are before the Board. They are asking for several waivers including, high intensity soil mapping, the written description of the entire parcel, location of the wetlands (as it is all Town owned land), and for the stormwater runoff calculations.

Mr. Sherman stated the first order of business was completeness. He asked for any questions or a motion.

Mrs. Schenkel 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 for a Resource Protections Permit to construct a pump station and rehabilitate existing sewer lines within 250' of RP1 wetlands located in the area of Route 77 and Maple Lane be deemed complete.

Mr. Godfrey seconded the motion. 5 in favor, 0 opposed.

Mr. Sherman stated the Board needed to determine if a site walk or public hearing would be necessary. He asked Ms. O'Meara if there had been any interest in the project.

Ms. O'Meara stated there had been none.

Mr. Godfrey made the following motion.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Town of Cape Elizabeth for a Resource Protection Permit to construct a pump station and rehabilitate existing sewer lines within 250' of RP1 wetlands located in the area of Route 77 and Maple Lane be approved.

Mrs. Schenkel seconded the motion. 5 in favor, 0 opposed.

OLD BUSINESS

Spurwink Woods Subdivision - Spurwink Woods LLC is requesting preliminary Subdivision Review and a Resource Protection Permit for Spurwink Woods, a 42-unit/lot subdivision located between Killdeer Rd and Dermot Drive, Sec. 16-2-4. Preliminary Subdivision Review, and Sec. 19-8-3, Resource Protection Permit.

Mr. Sherman welcomed John Siegfried as a new Planning Board member.

Mr. Siegfried stated, for the record, that he had reviewed the recorded December 20th meeting and has all the correspondence, which he has read. He also had an opportunity to walk the site with the Town Planner.

Mrs. Schenkel wanted on the record, that, she had read all the letters in great detail, has walked the site walk a second time when there was no snow on the ground, so they could see some of the pools of water and wetlands. She has also driven Columbus Road 5 or 6 times as well as South and Stephenson Streets.

Mr. Sherman suggested that they take the issues one at a time with the applicant. He asked the applicant if he wanted to give an overview of application first. They will also not be discussing traffic that evening.

Mr. Godfrey asked what opportunity the public would have to make comment on new information submitted, besides in writing.

Mr. Sherman stated normally there would be another public hearing during final subdivision review.

Mrs. Schenkel stated that if there would substantive changes, the public should get the opportunity to respond.

Mr. Sherman stated they could revisit this issue at the end of tonight's meeting or at the end of the February 27th meeting.

John Mitchell, Mitchell & Associates, representing Spurwink, LLC. gave a summary of the plan revisions. They have removed all 3 of the retention basins, have incorporated an emergency turnaround easement at the intersection of South St and Aster Lane, added a retaining wall and guard rail at the South Street stream crossing, added an evergreen buffer on the easterly side of South Street, relocated portions of the trail and included a trail easement in the area of the condominiums. Boardwalks have been added at wetland crossings and a stop sign has been added at Chicory Lane and Killdeer Road. They would like a waiver for #13, to shorten the radius and would still access emergency vehicles. He stated Al Palmer from Gorrill & Palmer would address the stormwater issue.

Mr. Sherman would like to responses from the Mr. Malley and Chief McGoldrick concerning the waiver request.

Al Palmer, Gorrill & Palmer reported on Stormwater. He stated the modifications of the buffer would allow them to use the natural ability of the forested area and the wetlands to act as an attenuator to stormwater quantity and change the water quality. The proposed three level lip-spreaders will allow more equal drainage. This will allow slowing of the drainage, and get some natural storage in the wooded areas and wetlands. The modified Stormwater report has been submitted to the Town Engineer and there are a few comments, however, they agree that using the forested buffer is the best stormwater management tool.

Mr. Kennealy asked if they had tested for a 25 yr or 100 yr storm to see if runoff overflow would occur in neighboring homes.

Mr. Palmer stated they analyzed the 2, 10 and 25 yr storm and determined the runoff would be at or below predevelopment rates.

Mrs. Schenkel asked how removing most of the trees in the forested are would affect the flow of water.

Mr. Palmer stated the analysis as of today shows the slope of drainage. With the change of the surface and topographic condition, they were able to determine the new proposed flow, which will be spread over a larger area, over a greater amount of time.

Mr. Siegfried asked if there were other examples of this type of water dispersal.

Mr. Palmer stated the DEP is stringent when wetlands are used to treat stormwater. By discharging through the upper wetlands, the stormwater will be treated enough to meet DEP guidelines.

Mr. Godfrey questioned locating pipes to maximize the number of trees to be undisturbed.

Mr. Palmer stated they would walk the area with Mitchell & Associates to tweak alignment to keep the specimen trees there.

Mr. Godfrey asked what is required to maintain the lipspreaders.

Mr. Palmer recommended twice a year to check for build-up of sediment.

Mr. Kennealy asked if there were any other developments that use this design.

Mr. Palmer stated they have used this in some limited commercial use.

Mr. Kennealy asked if what is dissolved are suspended solids.

Mr. Palmer stated that the solid matter is getting treated through the forest duff; national studies show that if there is treatment on suspended solids, there is corresponding treatment on dissolved matter.

Mr. Sherman asked, what if this doesn't work?

Ms. O'Meara stated that the Town uses alternative strategies at the Public Works Facility. There is a lipspreader out the Public Works Director's office and is not a unique technology. The engineers know how fast water can flow on this type of ground before the soil erodes.

Mr. Palmer stated they are discharging stormwater from the lipspreaders at 40% of what the DEP allows to minimize maintenance issues.

Mr. Kennealy asked if there was a provision for monitoring wetlands.

Mr. Palmer stated the DEP does not require monitoring of the wetlands; they only have to meet the setback of the wetlands.

Mr. Driscoll addressed the issue of using lot 11 as access for the subdivision. Lot 11 was approved in a 1966 subdivision. It was questioned if it was appropriate for a residential lot in a subdivision may be used as access to an adjacent subdivision. After legal research, they were able to determine there was no restriction or provision specified in the Mitchell Highlands Subdivision.

Mr. Sherman asked if there were any restrictions on the lots of Mitchell Highlands.

Mr. Driscoll stated from their review there are no restrictions that would prevent use of Lot 11.

Mr. Sherman introduced a letter from Michael Hill, the Town Attorney on this issue. The Board took a moment to review the letter.

Mr. Driscoll, Attorney for the applicant, stated after reviewing the letter, that, the letter agrees there is not a legal impediment in removing land from one subdivision to another.

Mr. Hatem asked Mr. Driscoll if they had researched the Town files of Mitchell Highlands.

Mr. Driscoll stated no, they had looked at title restrictions and plan notes on the subdivision plan.

Mr. Hatem asked why there wasn't an amendment to create a clear record of what each lot contains and what restrictions apply to it.

Ms. O'Meara stated they could modify the current application for approval.

Mr. Sherman asked Ms. O'Meara if she had reviewed the original subdivision plans for Mitchell Highlands.

Ms. O'Meara stated that there wasn't a file, however, there were copies of the recorded plats and there were no restrictions to uses of the lots.

Mr. Hatem asked if there were any minutes from the Planning Board at that time.

Ms. O'Meara stated no.

Mr. Driscoll addressed the construction of Chicory Way over lot 11, as it would make it nonconforming. The lot is subject to all development criteria, and has to comply with all standards or it cannot be approved.

Mrs. Schenkel stated she was very troubled by both the Town Attorney's response concerning the lot having clear title. When the parcel was bought, it was bought as a lot in Mitchell Highlands, not Spurwink Woods. The lot was then placed in this subdivision. She does not believe clear title answers the question of this being the correct use for the

lot. She understands that the Town Manager and Town Staff are very much in favor of putting in roads to access subdivisions. She also questions the size remaining of the secondary lot with the easement.

Mr. Driscoll stated if the applicant has right title and interest and the aggregate of its properties complies with the subdivision standards, it is appropriate.

Mr. Hatem pointed out that amendments can be made to original subdivisions.

Mr. Kennealy asked how the road plays a part in the Bisected Lots Amendments.

Ms. O'Meara stated it has nothing to do with it right now. The amendment would apply if the applicant did not own the lot, and the private property owner provided a 50' wide easement down the middle of the lot and did not leave the minimum 20,000 sq. ft.

Mr. Driscoll stated it would be appropriate for the applicant to apply for an amendment to the Mitchell Highlands subdivision.

Mr. Sherman pointed out that homeowners can make deeded restrictions lots to limit future uses of the lot.

Mrs. Schenkel stated that was unfair to ask all homeowners to be attorneys and there are limits to what people should know.

Mr. Sherman noted that this property has been proposed for development twice before.

Mr. Sherman asked Mr. Mitchell for his next item.

Mr. Mitchell gave their response on items brought up at the public forum. They have included a foldout of a previous wetland study. When compared to the their survey, it is very similar. Their wetland specialist, Dale Brewer, actually determined more wetlands. Mr. Brewer brought David Rocque, a State Soil Scientist, to the site and reviewed the wetland delineations. Mr. Rocque wrote a letter stating that the wetlands were designated properly and does not believe either of the ponds qualifies as vernal pools.

Mr. Sherman asked if the applicant hired Mr. Rocque.

Mr. Mitchell stated that Mr. Rocque is a State Employee.

Mr. Siegfried stated that Mr. Rocque said you cannot see eggs and salamanders on January 4, in the winter, and therefore could not be considered peer review.

Mr. Mitchell recited, from Mr. Rocque's email, that neither of wetland areas appear to have enough ponded water for a long enough period of time based on stained leaves and trees growing in temporary ponded areas.

Mrs. Schenkel stated that Mr. Rocque stated he would be happy to come to the Board and review the wetlands with them.

There was discussion concerning reviewing the wetlands again in April. If the application is still being reviewed in April, the Board can ask the applicant for another wetland review.

Ms. O'Meara stated, that, on a site walk with some Planning Board members, they had met Mr. Rocque exiting the site. He said, that, generally what one can see of the leaf litter and the type of soils, you could determine if an area would not meet the criteria for the hydrology for a vernal pool. Ms. O'Meara stated there was no discussion concerning this project.

Mr. Mitchell stated there were alternate designs prepared for this project including a conventional subdivision plan. The total number of lots was 26 versus the 42 for the current proposal, road length 2880 linear ft vs. 1900, 7.16 acres of open space vs. 10.5 acres, and useable open space of 3.05 acres vs. 5.09 acres for the current proposal. There were no trails or public access proposed with the alternate design.

Mrs. Schenkel stated the Board needs to consider the intent of the law and the spirit of the law concerning open space. There are portions of the designated land that she does not consider as open space. She calculated different areas that she considered to not be open space and came up with 90,176 sq. ft. or 2.07 acres. The current proposal will remove almost all the trees, and the lots are tiny so you can't preserve them. In the alternate design with 20,000 sq. ft. lots, trees could be preserved.

Mr. Mitchell reviewed again the open space proposal. In a traditional subdivision design there is nothing that prevents a homeowner from clearcutting their lot. Useable open space requirement would be 3.3 acres and they are preserving 5.9 acres. Some areas of open space serve as a buffer, and some as a trail. They have met what is specified by the Ordinance. The design was created to preserve the sensitive areas as dedicated open space to be given to the Town. The Conservation Commission reviewed the open space and approved it unanimously.

Mrs. Schenkel asked if there would be restrictions on the deed to prohibit sale of the open space.

Mr. Mitchell stated yes.

Mr. Sherman said the current proposal is far superior. The first submission would allow homeowners to clear all trees.

Mr. Mitchell discussed the South Street retaining wall and supplemental evergreens for the vegetative buffer.

Mr. Siegfried asked about 16-3-1(c) provision for a vegetative buffer bordering the buffer.

Mr. Mitchell stated they intended to preserve existing vegetation.

Mr. Mitchell stated the trail system will be relocated to increase the distance between the trail and condominiums.

Mr. Kennealy asked what the new distance would be.

Mr. Mitchell stated it is increasing from 13' from the condos to a 45' separation.

Mr. Mitchell stated they would be maintaining South Street extension as requested. The applicants will also bring Hamlin Subdivision and Mitchell Highlands in to Subdivision compliance through connectivity.

Mr. Mitchell included a specification for blasting that will be included in the contract documents.

Mr. Kennealy asked if there would be pre-blast video recordings of existing homes.

Mr. Murray stated that there would be pre-blast survey prior to existing homes within 500'.

Mr. Sherman asked if there were any other questions or comments.

Mr. Kennealy commended Mr. Mitchell on moving the trail.

Mrs. Schenkel stated her concerns about the abutter's issues with the density of the project.

Mr. Mitchell stated they are allowed 46 units, however, are only proposing 42. This proposal is in compliance with adopted Comprehensive Plan.

Mr. Godfrey asked Ms. O'Meara if there had ever been an add-on to an existing dead end subdivision in Cape Elizabeth.

Ms. O'Meara stated Mitchell Highlands, was approved in 3 parts, so it could be considered as an add-on. Heritage Court, Cove View and Channel View are examples also. She stated she would try to get other examples for the Board.

Mr. Godfrey asked if a greater limitation for time of construction had ever been imposed.

Ms. O'Meara stated there were explicit restrictions in earth material operations.

Mr. Sherman suggested tabling the meeting until the February meeting when traffic will be discussed.

Mrs. Schenkel asked that the Town Traffic Engineer be prepared with suggestions for the neighbors.

Ms. O'Meara stated she would ask the engineer for that.

Mr. Siegfried asked for an aerial view of the area to be able to visualize cut-through traffic.

Mr. Hatem made the following motion.

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Spurwink Woods LLC for Preliminary Subdivision Review and a Resource Protection permit for Spurwink Woods, a 42-unit subdivision, located between Dermot Drive and Killdeer Rd, be tabled to the regular February 27, 2006 meeting of the Planning Board.

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

Mr. Sherman asked for a nomination of Chair for the 2006-year.

Mr. Hatem nominated Mr. Sherman as Chair and Mrs. Schenkel as Vice-Chair.

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

Mr. Godfrey made a motion to adjourn.

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

Meeting adjourned at 9:15 p.m.

Respectfully submitted,

Laurie Palanza
Minutes Secretary