

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

JUNE 20, 2006

7:00 PM TOWN HALL

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

David Griffin
John Siefried
Paul Godfrey

Also present was Maureen O'Meara, Town Planner.

Mr. Sherman opened the meeting and asked for comments on the prior month's meeting. Hearing none, he asked for a motion.

Mr. Griffin made a motion to accept the minutes as submitted.

Mr. Kennealy seconded the motion. 7 in favor, 0 opposed.

Mr. Sherman reviewed correspondence and asked that anyone who wanted to ensure that their correspondence was received, to check with the Town Planner.

Mr. Sherman asked the Board to consider a site walk for an Ms. Ratigan concerning Alder St./Cheverus Rd.

A site walk will be held on Thursday, June 22nd, at 5:00 p.m.

CONSENT AGENDA

Manning Subdivision Amendment - Martha and Richard Manning are requesting an amendment to the Highlands Subdivision to expand the building envelope for the lot located at 2 Heritage Court to include a portion of the existing home, Sec. 16-2-5, Subdivision Amendment.

Mr. Sherman reminded the Board that if significant discussion is desired, the item would need to be removed from the Consent Agenda. Hearing none, he asked for 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 Richard and Martha Manning for an amendment to the previously approved Highlands at Broad Cove Subdivision to amend the building envelope so that the existing home is completely within the building envelope for the lot located at 2 Heritage Court be approved.

Mr. Godfrey seconded the motion. 7 in favor, 0 opposed.

Two Lights Professional Center Site Plan Extension - Wyley Enterprises, Inc. is requesting a 1-year extension of the site plan approval for Two Lights Professional Center, a mixed use office/residential building proposed to be constructed on Davis Point Rd, Sec. 19-9, Site Plan Extension.

Mr. Sherman reminded the Board that any substantive discussion would require removal from the Consent Agenda. Hearing none, he asked for a motion.

Mr. Siegfried made the following motion.

BE IT ORDERED that, based on the request submitted, the request of Wyley Enterprises to extend the approval for the Two Lights Professional Center, a 6,000 sq. ft. mixed use office/multi-family residential building to be located on Davis Point Rd, be extended to June 20, 2007.

Mr. Kennealy seconded the motion, 7 in favor, 0 opposed.

OLD BUSINESS

Mr. Sherman stated that public notice was not provided for the public hearing scheduled for the Elliot Private Accessway. He asked for a motion to table the item to the following month.

Mr. Kennealy made the following:

BE IT ORDERED that, based on the plans and materials submitted, the application of Don Elliot for a Private Accessway Permit and Resource Protection Permit to make the lot located at 43 Hannaford Cove a buildable lot and construct a driveway across an RP2 wetland be tabled to the July 18, 2006 meeting, at which time a public hearing will be held.

Mr. Godfrey seconded the motion. 7 in favor, 0 opposed.

Spurwink Woods Subdivision - Spurwink Woods LLC is requesting Final Subdivision Review, Amendments to the previously approved Mitchell Highlands and South Portland Estates Subdivisions, and a Resource Protection Permit for Spurwink Woods, a 42 lot/unit subdivision located between Killdeer Rd and Dermot Drive, Sec. 16-2-4, Final Subdivision Review, Sec. 16-2-5, Subdivision Amendments, and Sec. 19-8-3, Resource Protection Permit.

John Mitchell, Mitchell & Associates, reviewed the most recent submission package. There is an Option A for the gate to be located on Chicory Way with proposed hammerhead turnaround, and is the preferred plan. This would allow connectivity to the Maxwell property. This would allow no traffic through to Columbus Road, and therefore, no traffic calming measures would need to be imposed and allows interconnectivity for pedestrians. A schematic sidewalk plan has been prepared for the Columbus neighborhood, as the Board requested. A revised metes and bounds description is included in the submission showing the revised open space.

Mr. Sherman reminded the that Board the Town Attorney was present if needed.

Tom Gorrill, Gorrill Palmer Associates, stated with the change of Option A, the traffic associated with the development would head towards the Spurwink/Stephenson intersection. There would be 33 vehicular trips entering, 18 exiting, equaling 51 trip ends during the peak hour, with none exiting at Columbus Road. He stated he did recommend some traffic mitigation at the Stephenson/Spurwink intersection.

Mr. Mitchell hoped the Board would take final action this evening.

Mr. Sherman stated that due to the referendum that passed, the Board should discuss placement of the gate, as some traffic calming issues would be moot, depending on gate placement.

Mr. Griffin stated he would be inclined to go with the gate on Chicory Lane.

Mrs. Schenkel stated that this is a landlocked piece of land, without good ingress or egress, and it is unfair to put all the traffic onto Stephenson St. and Spurwink Ave. The 510 extra cars, approximately, seems a lot on those tiny streets. She thought the fairest way to resolve the issue is to put the gate in the middle, so traffic would be split 50/50.

Mr. Sherman asked why she believed the trip end decreasing in the Stephenson area would be unfair.

Mrs. Schenkel stated she went back to the original study and it does not decrease traffic. It does eliminate cut-through traffic but will add homeowner traffic. She believes a better way to plan this development would be less lots, enforced boundaries and covenants, and require that trees remain, as the land will be clear cut. She believes Mitchell & Associates did a fantastic job, but this land locked piece of land did not require to be developed through open space development.

Mr. Hatem stated if Option B is chosen, there is nothing that stops movement of the gate in the future. He does not believe Chicory Lane is not the best choice.

Mr. Godfrey stated that if the loop connects through South Street, it would not be a cut through road, and believes sharing the burden of traffic should be shared between neighborhoods. He would choose Option B.

Mr. Siegfried stated he was inclined to choose Option B, with the flexibility to move the gate at a later date.

Mr. Hatem stated Option B puts sidewalks on the table, which is good planning for the Town.

Mr. Sherman stated, that if they are decreasing the peak hour trips at the Spurwink/Stephenson intersection, that is a plus. Side walks already exist on Dermot and Hamlin Streets. If the gate is placed on Chicory Lane, Mitchell Highlands will not be disrupted. He believes that they need to take in account for the future and option "a" is better planning for the Town of Cape Elizabeth.

Mr. Gorrill stated that if you look at the original proposal, without the gate, there was an assessment of cut-through traffic. With the gate, they reassigned the traffic for just the development, which increases the trip ends at Stephenson St. from 43 trip ends to 51. The potential cut through traffic has been eliminated.

Mr. Kennealy stated that Option B will create a further reduction at Stephenson St., and traffic will be divided between the two neighborhoods.

Mr. Sherman asked if part of the cut through traffic originate from Mitchell Highlands.

Mr. Gorrill stated yes. The plan that is currently proposed is a reduction of traffic from the plan that was approved.

Mr. Siegfried asked staff, how difficult is it to move the gate at a later date to create a loop?

Mr. Hatem said you would need to reserve that as part of the approval.

Ms. O'Meara responded that people that live next to the gate, love the gate and it would be difficult to relocate. They could easily put another gate next to the condominiums.

Mr. Siegfried ultimately likes the gate at Chicory Way.

Mr. Mitchell stated that multiple gates would be a bad idea. He believes that by placing the gate at Chicory Way, they will not be dividing Spurwink Woods, which he believes would be bad planning.

Mr. Sherman is concerned with multiple gates and dead end streets. He asked if it would be prudent to enter executive session with the Town Attorney.

Ms. O'Meara stated that if the Board wanted to receive confidential legal advice, they could retire to executive session. If the Board is looking for a legal opinion or a range of options, they do not need to enter executive session.

In the response to the question of how to revisit gate placement in the future, Mr. Michael Hill, Town Attorney, stated it would be difficult to place a gate with stipulations on movement elsewhere.

Mr. Godfrey asked why it would be difficult.

Mr. Hill stated that homeowners, 10 years from now, will state that they bought the property, with certain rights, that moving the gate will adversely affect. He believes you can legally make stipulations, but doesn't know if it would be legally binding 10 years from now. You would need to deal with the same issues that are difficult right now.

Mrs. Schenkel asked if there was any way to get Maxwell to agree to use the farm road to create a loop so there would be no need for Chicory Way.

Ms. O'Meara stated she has had conversations with the Maxwell family; however, they are at the very earliest stages of trying to decide what they want to do. She would not want the Planning Board to be perceived as trying to get a farming family to try and develop their property.

Mr. Sherman asked for a straw vote. There were 3 for option "b" and 3 for option "a". Mr. Godfrey was undecided.

Mr. Sherman suggested the Board take a break from this discussion and move to other issues.

Mr. Kennealy asked why Mr. Siegfried changed his vote from Option A to B?

Mr. Siegfried stated he would be against more gates.

Mrs. Schenkel asked if they had heard back from the EPA concerning Stormwater.

Mr. Mitchell stated everything is approved, and is just waiting to receive it.

Mr. Sherman asked about the issue that Mr. Keck brought up concerning the trail being impractical because it crosses the level lipspreaders.

Mr. Mitchell stated that was addressed at the last meeting. The trails do not cross the level lipspreaders.

Mr. Siegfried asked if the option of the town removing the raised crosswalk was removed.

Mr. Mitchell said no, but will remove it from the plan.

Mr. Godfrey asked about improvements at the Stephenson/Spurwink intersection with option "a".

Mr. Gorrill stated they had recommended a 3-way stop, trimming vegetation, and a flashing warning sign. The peer review indicated approval of the flashing light. He stated that 2 way stop could be implemented, with monitoring. This would be implemented under both options.

Mrs. Schenkel stated that a flashing light could be very annoying and would like to hear the abutter's opinion on it.

Mr. Sherman asked if it would be possible to deactivate the light after a certain hour.

Mr. Gorrill stated he would not recommend that, however, there are ways to minimize the effects on abutters. He did agree that was a legitimate concern.

Mr. Sherman asked what the vegetation trimming landscaping around the intersection would include.

Mr. Gorrill stated that they only had the flashing light on the submission.

Mrs. Schenkel read from Mr. Bryant's letter, where he would like a 2-way stop and a mirror placed for exiting his driveway.

Mr. Gorrill discussed traffic exiting and entering the Stephenson St. He stated more people would be turning left from Stephenson than turning right.

Mr. Godfrey was concerned with a stop sign on Spurwink Ave, as people would not expect a stop sign on a through roadway.

Mr. Sherman asked if that meant he would not be willing to vote for approval this evening.

Mr. Godfrey thinks a 2-way stop would be better and is concerned for safety and the flashing beacon. He believes this could be a potential safety issue.

Mr. Gorrill stated they are flexible, and would want monitoring of the situation.

Mrs. Schenkel stated, since there will be construction for a few years out, that monitoring could be in place.

Mr. Godfrey's concern, is who is responsible if the intersection is a safety concern?

Mr. Sherman asked Mr. Godfrey what his position was for gate placement.

Mr. Godfrey said he would be inclined to have the gate at Chicory Way, if the safety issue at the intersection could be mitigated.

Mr. Sherman asked the Board for other questions for the applicant.

Mr. Mitchell asked if they could address the stormwater issue.

Al Palmer, Gorrill Palmer, recapped the manner in which the DEP is reviewing the stormwater management plan. There are two different standards, from the Town and DEP and they need to meet both. There were new rules that came into effect from DEP; however, Spurwink Woods submission was submitted prior to new guidelines. In meeting with town staff and the DEP, it was determined that the level lipspreaders would be the best option for stormwater concerning quality and quantity.

Mr. Siegfried asked about fertilizers from homes and salt from the roads and its effects.

Mr. Palmer stated DEP standards don't regulate standards level of fertilizers used; they look at maintenance and operation of buffers to maintain water quality.

Mr. Godfrey asked if there would be a change in phasing of the project depending on gate placement.

Mr. Mitchell stated no.

Ms. O'Meara stated that the applicant intends to build phase 1 first, then phase 2 and 3 may be interchangeable.

Mrs. Schenkel asked about the gate design.

Mr. Mitchell consulted with Bob Malley, who wanted something similar to the Crescent Beach gate with a padlock.

Ms. O'Meara talked with town staff, and they do not want an electronic gate, as there are maintenance issues. The gate design submitted by the applicant is what town staff would recommend.

Mrs. Schenkel asked if the gate was steel.

Mr. Mitchell stated it is timber, with steel brackets.

Mrs. Schenkel asked if it is possible to keep the gate area as dirt to look as a driveway.

Mr. Sherman would be reluctant to do that, as it needs to be accessible to emergency vehicles.

Ms. O'Meara read from the Ordinance, which states it must be paved.

Mr. Sherman stated that each finding of fact must be voted on individually.

Mr. Godfrey would like to bring forward a condition of approval. He proposes, as a condition of approval, that the traffic improvements at the Spurwink/Stephenson intersection be reduced to a 2 way stop, the 1st stop being on Stephenson, exiting onto

Spurwink, and on the southbound Spurwink Ave approach, without a flashing beacon, if the Town Traffic Engineer agrees this would meet safety needs. If the Town Traffic Engineer agrees to monitoring to ensure if safety becomes an issue, the applicant will pay for alternate mitigation measures. These measures would include additional stop signs, flashing beacons, or relocation of the emergency gate. This would be monitored for 12 months after completion.

Mr. Siegfried would want the 3-way stop.

Mr. Sherman was inclined to go with the 3-way stop.

Mr. Kennealy asked what the standards were to define a dangerous intersection, short of fatalities.

Mr. Gorrill stated when there are sight line restrictions, or accident history, and there isn't any at this location.

Mrs. Schenkel asked the applicant to work with the abutter for mirror placement.

Mr. Gorrill agreed.

Mr. Sherman suggested Board members take turns with the Findings of Fact and asked Mr. Hatem to begin.

1. The proposed project is a clustered residential development with permanently preserved open space and these uses do not generally include discharges to the water or air that are regulated as pollution. The plan will not result in undue water or air pollution. The project does not include floodplain areas. The project will be served by public sewer instead of subsurface disposal systems. The plan includes construction of level lip spreaders that discharge storm water over a 100' wide naturally vegetated area intended to absorb and cleanse storm water flows before they are discharged into an existing RP1 designated wetland. The slope of the land and the creation of a 100' wide natural vegetation buffer will mitigate the impact of stormwater flow.

Motion made by Mr. Hatem, seconded by Mr. Griffin. 7 in favor, 0 opposed.

2. Based on the letter of the Portland Water District dated 9/21/05, the project has sufficient water available for the reasonably foreseeable needs of the subdivision.

Motion made by Mr. Godfrey, seconded by Mr. Hatem. 7 in favor, 0 opposed.

3. The plan includes a sediment and erosion control plan consistent with Best Management Practices. The plan will not cause an unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

Motion made by Mr. Kennealy, seconded by Mr. Hatem. 7 in favor, 0 opposed.

4. The applicants have submitted a traffic study prepared by Tom Gorrill, professional traffic engineer of Gorrill Palmer Engineering and dated 10/27/05, which analyzes the traffic to be generated by the proposed project. On behalf of the Town, Tom Errico, professional traffic engineer of Wilbur Smith Associates, conducted a peer review of the traffic analysis, dated 12/9/05, and found it consistent with standard traffic engineering practice. Both engineers found that, with recommended traffic improvements, the project would not create unsafe conditions. The plan will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways, public roads or traffic patterns, alone or in conjunction with existing or contemplated road use;

Motion made by Mr. Siegfried, seconded by Mr. Griffin.

Mr. Godfrey asked that the motion be amended to applicant should be required to submit an updated traffic study, consistent with the option that is approved.

Mr. Hatem suggested this be added as a condition of approval once an approval motion is made. Mr. Godfrey agreed.

Mrs. Schenkel is voting against this, as she believes the intersection is unsafe 6 in favor, 1 opposed. (Schenkel).

5. Based on the recommendation of the Bob Malley, Town Public Works Director and Sewer Superintendent in his memo dated 3/31/06, the project will provide for adequate sewage waste disposal by utilizing the public sewer system.

Motion made by Mrs. Schenkel, seconded by Mr. Godfrey. 7 in favor, 0 opposed.

6. The 1989 Visual Resources Assessment Report conducted by the Town do not list the project area as a significant scenic area or vista. The project has been designed as an Open Space Zoning subdivision, resulting in conservation of most of the 12.58 acres of open space in its natural state as forest and wetlands. Soils and wetlands expert Dale Brewer, of Statewide Surveys Inc., submitted a written report and oral testimony that vernal pool habitat was not located on the property. No historic sites listed in the 1993 Comprehensive Plan are located on the property. The bulk of the wetland shorelines on the site, including all of the RP1 wetland, are located within the open space where public access will be permanently preserved. The project will not have an undue adverse effect on the scenic or natural beauty of the area, scenic vistas, aesthetics, wildlife habitat, historic sites or rare and irreplaceable natural areas; or any public rights for physical or visual access to the shoreline.

Motion made by Mr. Griffin, seconded by Mr. Kennealy.

Mrs. Schenkel is voting against as trees greater than 10” are being removed, which is against code.

6 in favor, 1 opposed. (Schenkel)

7. Based on the recommendation of the Town Manager Michael McGovern in his memorandum dated 10/28/05, the applicant has adequate financial and technical capacity to meet the above stated standards.

Motion made by Mr. Hatem, seconded by Mr. Godfrey. 7 in favor, 0 opposed.

9. The project, in whole or in part, is within 250 feet of a stream and wetlands as defined in the Zoning Ordinance. A DEP Stream Crossing permit has been issued and application for a Resource Protection Permit for wetland alterations is included in this application.

Motion made by Mr. Godfrey, seconded by Mr. Kennealy. 7 in favor, 0 opposed.

10. Based on the aquifer mapping in the 1993 Comprehensive Plan, no aquifer is located in the project area. The project will not, alone or in conjunction with existing activities, adversely affect the quality of ground water.

Motion made by Mr. Kennealy, seconded by Mr. Siegfried. 7 in favor, 0 opposed.

11. Based on the Federal Emergency Management Agency’s Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, the subdivision is not in a flood-prone area.

Motion made by Mr. Siegfried, seconded by Mr. Griffin. 7 in favor, 0 opposed.

12. Because the project employs a cluster design that reduces road and utility lengths, the project will promote energy conservation and efficiency.

Motion made by Mrs. Schenkel, seconded by Mr. Griffin.

Mrs. Schenkel is abstaining because she does not know if energy will be conserved or not. 5 in favor, 1 opposed (Godfrey), 1 abstained (Schenkel).

13. The Town Engineer has reviewed the project plans and made recommendations in numerous letters to the Planning Board to make the road designs for the project comply with the Road Classification Standards Table included in the Subdivision Ordinance. The Road Classification Standards table was created to implement the recommendations for road design in the 1993 Comprehensive Plan. The proposed roads conform to the Comprehensive Plan as adopted in whole or in part by the Town Council. At the direction of the Planning Board, the applicant has extended the right-of-way, but not the actual road surface, of South Street to extend to the abutting Maxwell property. Any traffic generated by future development of the

Maxwell property would be reviewed under the Subdivision Ordinance Traffic standards; therefore, analysis of possible additional traffic is premature and not needed at this time. The Board has required provision for the projection of roads or for access to adjoining property, whether subdivided or not.

Motion made by Mr. Griffin, seconded by Mr. Hatem. 7 in favor, 0 opposed.

14. The applicants have submitted a cut-through traffic study prepared by Tom Gorrill, professional traffic engineer of Gorrill Palmer Engineering dated 2/03/06, that analyzes cut through traffic that would occur if no emergency gate were installed between Mitchell Rd and Spurwink Ave. On behalf of the Town, Tom Errico, professional traffic engineer of Wilbur Smith Associates, conducted a peer review of the traffic analysis dated 2/15/06 and found it consistent with standard traffic engineering practice. Both engineers found that there would not be significant cut through traffic. The most recently submitted plans include the installation of an emergency access gate which would prohibit cut through traffic presently on Chicory Way, on the submission plan titled "Option A, Gate Plan". Local roads are laid out so that their use by through traffic is discouraged, and that roads are designed so as to provide safe, convenient and attractive access from the subdivision to previously existing or proposed public ways, and includes two or more means of such vehicular access.

Motion made by Mr. Hatem, seconded by Mr. Griffin.

Mr. Kennealy stated he was in favor of option "b", but will vote in favor of option "a" as because he believes it is a satisfactory. 5 in favor, 2 opposed (Schenkel,Hatem)

15. Based on the plans, which show preservation of naturally vegetated buffers and open space, and additional plantings where existing vegetation will not be preserved during construction, plants or other types of vegetative cover are preserved or placed throughout and around the perimeter of the proposed subdivision. They provide for an adequate buffer, reduction of noise and lights, separation between the subdivision abutting properties, and enhancement of its appearance.

Motion made by Mr. Godfrey, seconded by Mr. Kennealy.

Mr. Sherman stated that based on the site walk, that there would not be additional buffering needed. 6 in favor, 1 opposed (Schenkel)

16. No off-road parking lots, storage areas, rubbish disposal areas, or similar improvements exposed to public roads or to residential areas are proposed.

Motion made by Mr. Kennealy, seconded by Mr. Siegfried. 7 in favor, 0 opposed

17. The proposed roads have been reviewed by the Town Engineer and found in compliance with the Road Classification Standards Table. The Road

Classification Standards Table was created to promote road construction that preserves neighborhood character and consistent with the Comprehensive Plan. Proposed roads are laid out in an attractive manner, in order to enhance the livability and amenity of the subdivision, conform to existing topography, and minimize cuts and fills.

Motion made by Mr. Siegfried, seconded by Mr. Hatem. 7 in favor, 0 opposed.

18. Building envelopes have been created with setbacks from property lines, resulting in no shading of proposed or existing structures from adjacent structures. The proposed subdivision design has considered protecting and assuring access to direct sunlight and locating structures so as to minimize shading of either existing or proposed structures.

Motion made by Mrs. Schenkel, seconded by Mr. Siegfried. 5 in favor, 1 opposed (Schenkel), 1 abstained (Kennealy).

19. The subdivision is not designed as a traditional grid system. Block lengths do exceed 1,000 feet to suit the topography and character of the subdivision and to avoid an awkward road pattern or detrimental effect to adjacent property.

Motion made by Mr. Griffin, seconded by Mr. Godfrey. 7 in favor, 0 opposed.

20. Based on the comments of Police Chief Neil Williams in his memo dated 11/05/05, road names have been used which do not duplicate or may be confused with the names of existing roads.

Motion made by Mr. Hatem, seconded by Mr. Godfrey. 7 in favor, 0 opposed.

21. The applicant has submitted a storm water plan prepared by Gorrill Palmer Consulting Engineers, Inc. that has been reviewed and accepted by Town Engineer Steve Harding of Oest Associates as in compliance with the Town Storm Water Ordinance. The subdivision involves more than 10,000 square feet of impervious surface, paving, clearing or vegetative alteration and complies with the provisions and improvements for the control of storm water runoff governed by Chapter 18, Article II, Storm Water Control Ordinance. Drainage easements have been provided where channeling surface water within such subdivision on private property will require town maintenance.

Motion made by Mr. Godfrey, seconded by Mr. Kennealy. 7 in favor, 0 opposed.

22. In lieu of providing pedestrian easements, any area where trails are proposed will be conveyed to the Town of Cape Elizabeth in fee ownership.

Motion made by Mr. Kennealy, seconded by Mr. Siegfried. 7 in favor, 0 opposed.

23. For Open Space Zoning subdivisions located in the RC District, the minimum lot size is 7,500 sq. ft and the smallest proposed lot is 7,512 sq. ft. The lots are configured to orient to the proposed road. The area and width of lots conforms to the requirements of the Zoning Ordinance, including side lot lines at right angles or radial to road lines.

Motion made by Mr. Siegfried, seconded by Mr. Kennealy. 7 in favor, 0 opposed.

24. As shown on the plan, each property is provided with vehicular access to each lot by an abutting public or private road.

Motion made by Mrs. Schenkel, seconded by Mr. Kennealy. 7 in favor, 0 opposed

25. The project plan has been based on the Open Space Zoning Requirements, Sec. 19-7-2. Development is clustered on one side of the site and most of the 12.58 acres of open space is located on the other side of the project to maximize its value and protection as a natural area. Single family and condominium residential housing is proposed in an area of existing single family homes and undeveloped land. The cluster development has been designed, sited and laid out as to minimize disturbance of existing topography and ground cover, provide maximum usable natural or improved open space, reflect imaginative use of the site, and be compatible with any surrounding land uses and their character.

Motion made by Mr. Griffin, seconded by Mr. Godfrey.

Mr. Sherman stated he believes this to be an effective way to preserve open space.

Mrs. Schenkel disagrees that this is the right option for this piece of property, however, she does believe in Open Space Zoning.

5 in favor, 1 opposed, (Schenkel) 1 abstained (Kennealy).

26. Per the proposed plan and in an effort to blend the new development with the existing neighborhood, sidewalks and/or curbing have been provided where they are necessary for maintenance and public safety.

Motion made by Mr. Hatem, seconded by Mr. Siegfried. 7 in favor, 0 opposed.

27. 12.58 acres of open space, including the only RP1 wetland on the site, will be permanently preserved and donated to the Town. Through this open space dedication, the applicant, whenever practical, has preserved natural features such as water courses or bodies, existing trees of 10 inches or more in diameter (base height), marshes, swamps or other areas identified on the official wetlands map, open space, scenic points, historic spots, and unusual or striking topographic features which add to the attractiveness of the subdivision. The applicant has agreed to dedicate open space to the Town itself, conveyed through appropriate legal instruments, under review by the Town Attorney.

Motion made by Mr. Godfrey, seconded by Mr. Griffin. 5 in favor, 1 opposed, (Schenkel), 1 abstained (Kennealy).

28. The applicant will donate 12.58 acres of open space to the Town in compliance with the Open Space Zoning provisions, Sec. 19-7-2. The Open Space impact fee, alone requires an open space dedication of 12,937 sq. ft. per lot/unit or a total of 12.47 acres. The applicant will donate land to comply with the Open Space Impact Fee.

Motion made by Mr. Kennealy, seconded by Mr. Griffin. 7 in favor, 0 opposed.

29. Proposed deeds have been submitted that prohibit development on the donated open space. Common open space to be dedicated by the applicant shall be maintained to ensure that its use and enjoyment is not diminished or destroyed, with the applicant submitting written documents identifying that the Town shall own the land and be responsible for said maintenance.

Motion made by Mr. Siegfried, seconded by Mr. Griffin. 7 in favor, 0 opposed.

30. The plans show that the project will be served by public sewer and no subsurface disposal systems are proposed for the disposal of sewage for the development.

Motion made by Mrs. Schenkel, seconded by Mr. Godfrey. 7 in favor, 0 opposed.

31. No significant wildlife habitat has been identified by Dale Brewer, licensed soil scientist hired by the applicant, during his visits to the property. Mr. Brewer commented specifically that he had visited the site during April when vernal pools can be identified and he did not identify any vernal pools. The project makes adequate provision for the protection of wildlife habitat and fisheries areas, which may include but are not limited to maintenance of wildlife travel lanes, and the preservation and buffering of wildlife habitat areas from proposed development activities.

Motion made by Mr. Griffin, seconded by Mr. Godfrey.

Mrs. Schenkel stated that other than discussing vernal pools, she is not aware that they discussed this issue so she will abstain.

Ms. O'Meara stated that maps received from the State as part of the Comprehensive Plan work show that there is no critical life habitat.

Mrs. Schenkel agreed.

7 in favor, 0 opposed.

32. Based on the plans and the requirements of the Addressing Ordinance, the numbering of the individual residential dwelling units will be clearly visible. Signs clearly identifying the house numbers in each set of dwelling units will be placed along the road leading to each set of units.

Motion made by Mr. Hatem, seconded by Mr. Griffin. 7 in favor, 0 opposed.

33. The applicant has submitted letters from Central Maine Power, Time Warner Cable and the Portland Water District regarding provision of services to the subdivision. All utilities, including but not limited to the provision of water, gas (not applicable in this area of Cape Elizabeth) and electricity is adequate for the proposed development.

Motion made by Mr. Godfrey, seconded by Mr. Kennealy. 7 in favor, 0 opposed.

34. The proposed project, made up of single family homes, condominium units and open space, is harmonious with the surrounding single family neighborhoods and undeveloped land.

Motion made by Mr. Kennealy, seconded by Mr. Siegfried. 7 in favor, 0 opposed.

35. The adjacent Mitchell Highlands Subdivision, constructed in 1965 and 1966, was a 25± acre parcel, where 46 home lots were created and 1 acre of land was donated to the Town. The adjacent South Portland Estates neighborhood was recorded in 1925. 137 lots were created with an average lot size of 5,000 sq. ft. No open space was preserved and the majority of the lots are not developed. The proposed project, a 25± acre lot with 42 lots/units proposed and 12.58 acres of permanently protected open space is compatible with the density of the adjacent neighborhoods.

Motion made by Mr. Siegfried, seconded by Mr. Kennealy

Mr. Godfrey mentioned it should be 12.58 acres. Mr. Siegfried amended his motion. 6 in favor, 1 opposed (Schenkel).

36. The wetland alterations shown on the plan include culverts to maintain water flows where wetlands are altered. The project will materially obstruct the flow of surface or subsurface waters across or from the alteration area.

Motion made by Mrs. Schenkel, seconded by Mr. Godfrey. 7 in favor, 0 opposed.

37. Based on the Storm Water Management plan prepared and reviewed by professional, licensed civil engineers, the project will not impound surface waters or reduce the absorptive capacity of the alteration area so as to cause or increase the flooding of adjacent properties.

Motion made by Mr. Griffin, seconded by Mr. Siegfried. 7 in favor, 0 opposed.

38. Based on the Storm Water Management plan prepared by Gorrill Palmer Engineering and reviewed by Steve Harding, professional engineer with Oest Associates, the project will not increase the flow of surface waters across, or the discharge of surface waters from, the alteration area so as to threaten injury to the alteration area or to upstream and/or downstream lands by flooding, draining, erosion, sedimentation or otherwise.

Motion made by Mr. Hatem, seconded by Mr. Siegfried. 7 in favor, 0 opposed.

39. Based on the testimony and reports submitted by Dale Brewer, resulting from his visits to the project site, his training and experience in identifying sensitive wetland habitats and his conclusion that vernal pools do not exist on the site, the project will not result in significant damage to spawning grounds or habitat for aquatic life, birds or other wildlife.

Motion made by Mr. Godfrey, seconded by Mr. Kennealy. 7 in favor, 0 opposed.

40. The project does not propose to construct structures in wetland areas. Infrastructure that crosses wetlands is designed with a gravel base to support the structure, which has been reviewed and accepted by Town Engineer Steve Harding. The project will not pose problems related to the support of structures.

Motion made by Mr. Kennealy, seconded by Mr. Griffin. 7 in favor, 0 opposed.

41. The project area does not include coastal dunes or contiguous back dune areas.

Motion made by Mr. Siegfried, seconded by Mr. Godfrey. 7 in favor, 0 opposed.

42. The plans include preservation of open space to be preserved in its natural state through a conservation restriction included in the deed of the land to the Town. The project will maintain or improve ecological and aesthetic values.

Motion made by Mrs. Schenkel, seconded by Mr. Siegfried.

Mrs. Schenkel asked if this means maintain ecological value throughout, or just the open space.

Ms. O'Meara said that the findings states that the project meet the goals of preservation by providing the open space.

5 in favor, 2 opposed (Schenkel, Kennealy)

43. The plans show that no activity will occur within 100' of the RP1 wetland, except for trails, which are a permitted use in the RP1 buffer. The project will maintain an adequate buffer area between the wetland and adjacent land uses.

Motion made by Mr. Griffin, seconded by Mr. Godfrey. 7 in favor, 0 opposed.

44. The plans include an Erosion and Sediment Control Plan reviewed and found acceptable by Town Engineer Steve Harding. The project will be accomplished in conformance with the erosion prevention provisions of Environmental Quality Handbook Erosion and Sediment Control, published by the Maine Soil and Water Conservation Commission dated March 1986, or subsequent revisions thereof.

Motion made by Mr. Hatem, seconded by Mr. Griffin. 7 in favor, 0 opposed.

45. The Public Works Director, acting as Sewer Superintendent, and the Town Engineer have revised and found acceptable the sewer infrastructure construction plans. The project will be accomplished without discharging wastewater from buildings or from other construction into Wastewater Treatment Facilities in violation of Section 15-1-4 of the Sewage Ordinance.

Motion made by Mr. Godfrey, seconded by Mr. Kennealy. 7 in favor, 0 opposed.

46. The project plans include amendments to the South Portland Estates Subdivision and the Mitchell Highlands Subdivision to remove lots from those subdivisions and add that area to the Spurwink Woods Subdivision. Amended subdivision plans referencing the book and page of the original subdivision recording have been submitted for Planning Board signature. The Planning Board finds that these subdivision amendments do comply with the Subdivision Ordinance Standards, Sec. 16-1-1 and Sec. 16-3-1.

Motion made by Mr. Kennealy, seconded by Mr. Griffin. 6 in favor, 1 abstained (Schenkel)

47. The 1993 Comprehensive Plan includes a Growth Areas Map and a Rural Protection Areas Map. The Growth Areas Map includes the project site in an infill growth area. The Rural Protection Areas map shows areas where trails should be provided on lots that are not in designated Rural Protection areas. The Rural Protection areas map shows that 2 trails should be provided on the project site. Based on the trails proposed to be constructed by the applicant and deeded to the Town for public access, the Planning Board finds that the project conforms to the Comprehensive Plan Growth and Rural Areas maps.

Motion made by Mr. Siegfried, seconded by Mr. Godfrey.

Mr. Sherman stated this had been brought up by abutters.

Ms. O'Meara stated that this lot is clearly shown as a growth area on the Growth Areas Map.

7 in favor, 0 opposed.

48. The plans have been revised to eliminate 3 stormwater detention/retention basins in favor of utilizing level lip spreaders combined with a naturally vegetated buffer and an RP1 wetland. The application of older DEP regulations facilitates the substitution of basins for the level lip spreader approach, which has been encouraged by the DEP and supported by the Town Engineer's review. The Planning Board finds that the application of the older DEP Stormwater regulations does adequately protect natural resources and adverse impacts to downstream properties.

Motion made by Mrs. Schenkel, seconded by Mr. Griffin.

Mr. Hatem asked if this was approval for the old regulations.

Ms. O'Meara stated that the finding may be a little off, but either way the applicant is submitting a plan that addresses the quality.

7 in favor, 0 oppose.

49. The plans include preservation of 12.58 acres of open space, most of that forested. The open space will be permanently preserved through deed restriction and donated to the Town of Cape Elizabeth. The portion of the property to be developed is also forested and includes large mature trees. The proposed development will require the clearing of large trees greater than 10" in diameter. The Planning Board finds that the project plans do preserve natural features and existing trees of 10 inches or more in diameter whenever practical.

Motion made by Mr. Griffin, seconded by Mr. Siegfried.

Mr. Sherman asked about the requirement in the Ordinance concerning saving trees that are 10" in diameter.

Ms. O'Meara stated that the ordinance requires preservation of 10" trees whenever practical. It does not have exclusive prohibition of removal.

Mr. Kennealy asked what "whenever practical" meant.

Ms. O'Meara referred it to the Town Attorney.

Mr. Hill does not know of any case law concerning this, but 10" trees should be preserved wherever possible. If you couldn't place a home without taking down trees, the trees should be able to be removed. If a home can be placed, without removal of trees, then that should occur.

Mr. Kennealy said that this standard seemed soft. Mr. Hill agreed.

5 in favor, 1 opposed (Schenkel), 1 abstained (Kennealy)

Mr. Kennealy asked for a 3 minute break, Mr. Hatem so moved.

Mr. Hatem made the following motion:

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Spurwink Woods LLC for Final Subdivision Review, a Resource Protection permit and amendments to previously approved subdivisions for Spurwink Woods, a 42-unit subdivision, located between Dermot Drive and Killdeer Rd, be approved, subject to the following conditions:

1. That 20% of the tree budget be reserved and held by the Town till the end of year three after trees have been planted to pay for replacement of trees that die;
2. That the applicant submit final plans that include the installation of an emergency access gate, which would prohibit cut through traffic presently on Chicory Way on the submission plan titled "Option A-Gate Plan".
3. That a summary table of plantings on the condominium lot, including type, quantity and size at time of planting be added to the plans;
4. That deeds be submitted in a form acceptable to the Town Attorney and the Town Manager;
5. That the Applicant be required to submit a revised traffic study consistent with Option A;
6. That the traffic improvements for the Spurwink Avenue/Stephenson Street Intersection be a 3-way stop without a flashing beacon provided that the Town Traffic Engineer agrees that this will meet safety needs. The Applicant and Town Traffic Engineer will agree on a level of monitoring to ensure that if safety becomes an issue at this intersection, such as three or more accidents in a 12 month period that are attributable to the additional volume of traffic at this intersection, that the Applicant propose to the Town and pay for additional or alternative mitigation measures at this intersection. These mitigation measures may include additional signing, flashing beacons, or relocation of the emergency gate. The Town Traffic Engineer shall be responsible for making final safety threshold determination. Monitoring will be done 12 months following the completions of Phase 1 or at any time as directed by the Town;
7. That there be no alteration of the site nor issuance of a building permit until (1) a performance guarantee has been submitted in an amount acceptable to the Town Engineer, a form acceptable to the Town Attorney and all acceptable to the Town Manager and (2) all required state permits have been issued;
8. That the note that allows the crosswalk to be removed by the Town be deleted from the plans;

9. That boardwalks be constructed using 2 x 8 pressure treated wood supports and decking made of trex or 2 x 8 boards; and
10. That plans and materials be revised to reflect the above conditions prior to recording of the subdivision plat.

Mr. Sherman asked all in favor of the motion: 6 in favor, 1 opposed (Schenkel).

Mr. Sherman thanked the applicant for the hard work that went in to the project. He appreciated all the emails and correspondence from abutters.

Mr. Kennealy stated he thought this was a good development.

Mr. Sherman asked for a motion to adjourn.

Mrs. Schenkel made a motion to adjourn.

Mr. Hatem seconded the motion. 7 in favor, 0 opposed.

Meeting adjourned at 10:00 p.m.

Respectfully submitted,

Laurie Palanza