

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

October 16, 2007

7:00 p.m. Town Hall

Present: Barbara Schenkel, Chair
Paul Godfrey
James Huebener

Scott Collins
Peter Hatem
Jack Kennealy

Also present was Maureen O'Meara, Town Planner.

Mrs. Schenkel called the meeting to order and called for comments or corrections of the minutes of September 18, 2007. Mr. Godfrey made a motion to accept the minutes and Mr. Kennealy seconded. The minutes were approved without amendment, 6-0.

OLD BUSINESS

Maskewitz/McMullin Resource Protection Permit - Dianne Maskewitz and Scott McMullin are requesting that their application for a Resource Protection Permit for 4,191 sq. ft. of previously filled wetland and pond for landscaping located at 221 Fickett Street (R4-51-5), Sec. 19-8-3, Resource Protection Permit be tabled.

Mr. Godfrey made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Dianne Maskewitz and Scott McMullin for an after the fact Resource Protection Permit to fill 4,191 sq. ft. of wetland and pond for landscaping, located at 221 Fickett Street, be tabled to the regular November 26, 2007 meeting, at which time a public hearing will be held.

Mr. Kennealy seconded the motion and it was approved, 6-0.

Old Sea Point Rd Subdivision Amendment - Sally Crockett, owner of the lot located at 4 Old Sea Point Rd (R2-18), is requesting an amendment to the previously approved Old Sea Point Subdivision to reduce the road improvements to Old Sea Point Rd, located off of Old Ocean House Rd, Sec. 16-2-5, Subdivision Amendments Public Hearing.

Bob Metcalf, of Mitchell and Associates, made the presentation on behalf of the applicant. He reviewed the plan and slides of the existing roadway, which is 12 ft. wide, rather than the previously approved 18 ft. He noted that the site walk and subsequent discussions with Ms. O'Meara have led to a new proposal. The applicant proposes to improve the intersection with Old Ocean House Road. They will pave the first 50 ft of Old Sea Point Road to a width of 18 ft. and make improvements to the intersection. They will expand the radii, relocate the mailboxes, and expand the culvert at the intersection with Old Ocean House Road.

They propose to add 3 ft. of gravel to both sides of the road for a length of 350 ft. from the intersection, and expand the width and turning radius of the driveway to serve as a temporary turnaround for the fire vehicles. They do not propose to complete the rest of the road and turnaround as shown on the plan. They will also re-surface the paved portion of the road for the 350 ft from the intersection.

On the Resource Protection Permit, the proposal is 1500 square ft. of temporary impact to run both water lines through the wetlands. This will mean they will not need to go through ledge along the road.

The proposal also includes removal of some of the marginal trees along the roadway.

Mrs. Schenkel opened the public hearing.

Bruce Mills, of 20 Old Sea Point Road asked what the applicant planned to do with the turnaround shown on the plan at the end of Old Sea Point Road.

Mr. Metcalf said there is no plan for any improvements at that location. It will be up to the owner of Lot 2, or any other new lots along the road to complete the rest of the road and the turnaround at the end.

Mr. Mills also wants to know how many trees will be cut down, and whether the "bump out" was still being built.

Mr. Metcalf showed on the slides which of the trees were to be removed and some of the undergrowth also. He said the "bump-out" has been removed from the plans.

Mr. Mills then said that he and his wife support this plan.

Since there were no other public comments, the public hearing was closed and the meeting was opened up to questions from the Board.

Mr. Hatem said that based on the site walks and comments from the neighbors, he believes this proposal to be a fair compromise.

Mr. Collins asked what changes will be made to the pavement.

Mr. Metcalf replied that the first 50 ft. will be paved and then the next 300 ft. will be resurfaced. He also replied that the reason for not paving the full 18 ft. width was both cost and aesthetics. The visual impact of a full 18 ft of pavement would have an adverse visual impact on the appearance of the property.

Mr. Godfrey and Mr. Metcalf discussed how the slopes will be graded to original grade along the edges of the road. Then Mr. Godfrey noted that he also thinks this is a reasonable compromise in this case.

Mrs. Schenkel wondered about a maintenance agreement for the road.

Ms. Crockett replied that there is a maintenance agreement and that it is a part of the title record.

Mrs. Schenkel agreed that this is a solution to the current situation. She also wanted to be sure that any subsequent buyer of a lot on this road know that they are subject to this requirement to upgrade the road.

Mr. Hatem made the following motion:

Findings of Fact

1. Ms. Sally Crockett is requesting an amendment to the previously approved Old Sea Point Rd Subdivision to reduce the required width of the travel surface of Old Sea Point Rd from 18' to the existing width of 12' with pull-off area and a Resource Protection Permit to install water lines, which require review under Sec. 16-2-5, Subdivision Amendments, and Sec. 19-8-3, Resource Protection Permit.
2. The Town Engineer has identified construction details that should be revised to be in compliance with town standards.
3. The applicant is proposing to install water lines in an RP2 wetland instead of within the road right-of-way to avoid the cost of removing ledge.
4. Old Sea Point Road has not in the past nor does it now meet town road standards.

5. The application substantially complies with Sec. 16-2-5, Subdivision Amendments, and Sec. 19-8-3, Resource Protection Permit Standards.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Ms. Sally Crockett for an amendment to the previously approved Old Sea Point Rd Subdivision to reduce the required width of the travel surface of Old Sea Point Rd from 18' to the existing width of 12' with pull-off area and a Resource Protection Permit to install water lines be approved, subject to the following conditions:

1. That the plans be revised to address the Town Engineer's letter of 9/10/07, paragraphs 2 and 3.
2. That both water service lines be installed at the same time to minimize wetland disturbance.
3. That no building permit be issued for lot 1 until an engineer registered in the State Maine confirms that Old Sea Point Rd has been constructed as follows:
 - a. the first 350' of Old Sea Point Rd is widened, including adequate gravel base in accordance with the Town Subdivision Ordinance Road standards, to an 18' wide traveled surface,
 - b. radius improvements at the intersection with Old Ocean House Rd as detailed on the plan, and
 - c. the first 40' of their driveway off Old Sea Point Rd to town turnaround width standards.
4. That no building permit for lot 2 or any other lot created with access to Old Sea Point Road be issued until an engineer registered in the State Maine confirms that Old Sea Point Rd has been constructed as follows:
 - a. the portion of Old Sea Point Rd extending 350' west of Old Ocean House Rd to the end is widened, including adequate gravel base in accordance with the Town Subdivision Ordinance Road standards, to an 18' wide traveled surface, and
 - b. the turnaround located at the end of Old Sea Point Rd is constructed to town standards.

5. That the plans be revised to delete the pull-off area.
6. That there be no alteration of the site nor issuance of a building permit until the plans are revised to address the above conditions and submitted to the Town Planner

Mr. Huebener seconded the motion, and a brief discussion ensued about the paving of the entire length of the road and the turnaround. The motion was approved as proposed, 6-0.

Eastman Meadows Subdivision - Wyley Enterprises, LLC is requesting Major Subdivision Review and a Resource Protection Permit for Eastman Meadows, a 46-unit condominium located at 68 Eastman Rd (R4-18), Sec. 16-2-4, Major Subdivision Public Hearing and Sec. 19-8-3, Resource Protection Permit Public Hearing.

Owens McCullough, civil engineer with Sebago Technics, introduced the project. He said the goal tonight was to gather all the comments from the site walk, the public hearing and the completeness review, then come back with a final submittal at a later date.

He talked about the two roads to be built in the project. Both will be built to Town standards. Tanager Lane may be offered for Town acceptance if the condo association chooses to do so. Phoebe's Way will remain as a private road.

The condos will not be restricted to 55 and over, but the project will be more conducive to that group. It is not set up for families and kids. The marketing will be targeted to the over 55 age group. The units will all be single story with 1 or 2 bedrooms. All utilities will be underground.

Since the last Planning Board meeting, they have had a pre-application meeting with the DEP for the Site Location Permit, and a public informational meeting. They have also revised their community impact assessment.

Tom Errico, of Wilbur Smith Associates, has completed a peer review of the traffic study. Mr. Errico assumed a projected population of 70% under age 55, and found that Eastman Road was adequate to handle the traffic generated by the project.

Mr. McCullough noted that Mr. Errico used a different standard to measure sight distance than the applicant had done. He said they can use that standard, if necessary, but they have used the road classification table in the past, and have sought to be consistent with what they have done in the past.

Mr. McCullough addressed the concerns of the Fire Chief about the water mains. He said that they noted that the last studies of water flow were in 1994. The applicant requested that the Portland Water District make a new study of the water flow, and that the results of that study have shown that the water flow is adequate to handle this project.

The subject of the wetlands delineation was addressed. He noted that there have been concerns about the wetlands. They have a letter from the DEP that there was no violation or illegal disturbance of the wetland when the applicant dug a test pit on one area of the project. The applicant has also tried to be proactive by calling in the Army Corps of Engineers and the Maine DEP and asked them to do a peer review of the site and the wetlands. They looked at the possibility of streams on the project and found that there is no stream there on the side of the project. They also looked at the wetland delineation, and especially to an area noted by a member of the public. After much deliberation it was agreed to classify that area (near Phoebe's Way) as wetland.

The applicant wants to take all the comment from the public hearing and the Planning Board and the Town and come back in December with a new submittal of the project.

Mrs. Schenkel opened the public hearing.

Richard Carlson of 79 Eastman Road passed materials and pictures to the Board. He said he lives on the opposite side of the road from this project. He tried to purchase this parcel. He recommended that the Board should require a peer review of the wetlands delineation. First and foremost, he wants the Board to address the wetlands alteration that has already occurred. He also directed the Board's attention to aerial shots of the wetland areas that he has deemed to be altered. He wants to provide this information to the DEP and to the Code Enforcement Officer.

Mr. Carlson also raised the subject of wetlands on the southern end of the parcel to be acquired from the Sprague Corporation. He feels the density requirements of the project need to be recalculated in light of this wetland. He also noted that this wetland does not appear on any of the plans of the project.

He also wants the wetlands setbacks to be addressed. This project should have better guarantees on the size of the units since there will be no deed restrictions about the ages of the buyers. Should have specific limits on number of bedrooms, or size written into the condominium documents.

David Plimpton of 1000 Sawyer Road says that the neighborhood has been trying to draw attention to the traffic problems in the area. He feels the Town is being discriminatory to this area by targeting growth in this area. He does not agree with the zoning and the Comprehensive Plan for putting such a plan, which clusters such dense growth, in an area surrounded by wetlands. He says Sawyer Road has a problem with speeding. He wants sidewalks on Eastman Road, more subtractions from net residential area, and a wetlands setback of 250 ft. not the 70 ft. now shown. He feels the development is too large and unfairly centered in this one area.

Harry Smith of 999 Sawyer Road said he and his wife recently bought a house on Sawyer Road. They bought in that area because there were no such developments as the proposed one, in that neighborhood. Need to consider what draws people to Cape Elizabeth, and it isn't developments like the one he's seen tonight.

Mary Steven of 28 Eastman Road feels that Eastman Road is one of the most beautiful roads in Cape Elizabeth. People use it for running, biking and other activities. The condo development will take away from what we love about this road. The amount of traffic concerns her for the safety of her children.

Amory Houghton of 265 Spurwink Road spoke about the congestion of that development. The lot doesn't look like it's 40 acres. What is the required square footage for condominiums. These look sterile, stale, not interesting. Let's make it look like the rest of the neighborhood. It is not attractive. I wouldn't want to live there. He wants all the i's dotted and the t's crossed.

Jason Ames of 1024 Sawyer Road, is concerned about the heavy construction equipment using already compromised roads. He is worried about the safety of kids and walkers who use these roads.

Chris James of 1008 Sawyer Road agrees with all the adverse comments. He feels that this development is destructive to the neighborhood. This is a rural neighborhood and this development is just not suitable.

Barbara Wendell of 161 Mitchell Road spoke in favor of the project. She loves the open space, and loves being able to stay in Cape Elizabeth. She is facing

retirement and would be able to stay here in Town after she retires. She loves the Town, and she hopes the project goes forward.

Jason Ames of 1024 Sawyer Road had a question for the Board. Where there are going to be modifications to this plan, will there be another public hearing?

Mrs. Schenkel replied that there will be another public hearing, and she encouraged him and any others who wished to speak to the Board to email Ms. O'Meara with comments. She assured him that all the correspondence is read and considered by the Board.

Since there were no other comments, the public hearing was closed. Mrs. Schenkel opened the discussion to the Board members.

Mr. Huebener wanted more information about the different ways of calculating the sight lines.

Mr. McCullough talked about the road Classification table that is in the Zoning Ordinance. He said that historically they have used that table to calculate sight distances. There is also another provision in the Ordinance that talks about a more traditional sight distance, the side road standard. Historically we have always applied those on commercial developments. For residential developments we have always used the road classification standards. In this instance the peer review picked up on the side road commercial driveway distance and applied that distance.

Ms. O'Meara gave the background on the road standards. She noted that in the past wide straight roads were the standard and resulted in "highways through the woods". The road classification standards arose from the desire to maintain community character. These are the standards that have been used for residential development. We have left the old standards in place for use on commercial driveways.

Mr. Collins has a question about sight distances. He wants an explanation of how the sight distances were measured.

Mr. McCullough said that John Adams, their traffic engineer came up with that distance. Mr. McCullough explained how the distance measurements are made.

Mr. Collins asked if the new road will be higher or lower than Eastman Road?

Mr. McCullough replied that Tanager Lane will be about 6 in. higher than Eastman Road.

Mr. Collins wonders how you can see 230 ft. of sight distance along the road. Mr. Huebener also concurs that he wants verification of that distance. Mr. Godfrey agreed that it would be a good thing for any Board members who are concerned to go out with the engineers and see how sight distances are measured.

It was agreed that Mr. Collins, Mr. Huebener and Ms. O'Meara would meet with Mr. McCullough and Mr. Malley at the site to see the measurements being made. (Note: The meeting is scheduled for Monday 10/22/07 at 8:00 am.)

Mr. Godfrey acknowledged that the sight distances may not be adequate if you consider that most of the users of Eastman Road are going faster than the speed limit. Even if the posted speed limit is 30 mph, if in fact people travel at a faster rate, the developer may have to adjust the sight distance upward.

Mr. Kennealy feels there are still open questions about the wetlands. Since the public has raised the wetlands as a possible problem.

Mr. McCullough noted that they have called in the Army Corps of Engineers, and the DEP for a peer review of the wetlands delineation and the possibility of a stream at the edge of the property. After a two hour review, the consultants decided that there is a wetland in the Phoebe's Way area which will be delineated on the final plan. The Army Corps and the DEP do not differentiate between RP1 and RP2 wetlands. That is a Cape Elizabeth distinction. For the others, it is wetland, or not wetland.

Mark Hampton, a wetland scientist, a certified soil scientist who has worked in the field for 20 years, spoke about the mapping of the wetlands. He said they looked at the wetland/upland boundaries at the site walk.

Mr. Collins asked how large the area is that has been newly identified as wetland.

Mr. Hampton replied that the area is roughly in the neighborhood of 8,000 to 10,000 sq. ft. (about 100 ft x 100ft.) It was clear to the experts that there had been no filling of that wetland other than that a test pit had been dug. No other disturbance had happened. Historically, this piece of wetland had been formed by the farming of the parcel in the past.

Mr. Hampton was asked about wetlands on the Sprague parcel. He replied that there are wetlands on the far end of the parcel.

Mrs. Schenkel reminded everyone that the Sprague parcel will not be developed, and will not affect the development. She also asked about the western edge of the property where there are RP1 and RP2 wetlands.

Mr. Hampton noted that he had flagged the boundaries of all the wetlands, and then his flags have been survey located. He noted that GPS is not accurate enough for this locating, and so the boundaries are all survey located.

Mrs. Schenkel noted that the Board needs the written report from the Army Corps of Engineers, and the DEP, if they also write a report.

It was agreed that the Board will be provided with all the reports from both of those organizations.

Mrs. Schenkel wants the developer to consider having a deed restriction about the age requirements for the project. She also wants to encourage some variety in the exterior design. She understands the need for keeping the costs down, but would like to see a more interesting exterior design. She also expressed the opinion that if the project is not going to be only for 55 and older, she does not think the Community Impact statement is accurate.

Mr. Kennealy agrees that unless you specifically exclude children, you may attract young families.

Mr. McCullough noted that other projects of this sort that he has been involved with have not had many families with children moving in. He is also concerned that a grandparent may find themselves needing to raise a grandchild for some reason.

Mr. Hatem assured him that that contingency is permitted in 55 and over projects. He feels the decision about deed restrictions is a business decision to be made by the developer.

Mr. Hatem questioned the density calculations as raised by Mr. Plimpton's letter.

Ms. O'Meara noted that the method of calculation was the same one used in the Cross Hill subdivision. The Board is free to use another method of calculation if they choose to do so.

Several members of the Board said they had not really had time to review Mr. Plimpton's letter before the meeting, so they were waiting to do that after this meeting. It was noted that it seems like the method of calculation is what is being challenged. In past projects, the RP2 wetlands and buffer zones have not

been subtracted from the total, and the Board will strive to be consistent with past projects.

There was a discussion of traffic calming measures. The board discussed whether to require an escrow to cover such measures if needed. The applicant wants to know as soon as possible what those costs might be in order to make a business decision as to whether this project is economically feasible.

Mr. Godfrey notes that all by itself Eastman Road is a traffic calming measure. There are things that could be done to attempt to have an impact on speed and safety. He thinks maintaining the rural character of Eastman Road is the best bet to contain speeding. His opinion is that this development is not going to make a significant impact on Eastman Road. Eastman Road, like many roads, probably has a problem with people traveling too fast, but this project will not add an overburden on Eastman Road. There are traffic calming measures that the Board can require of the developer, if they choose to do so.

After more discussion, it was decided that the developer will come to the November workshop meeting for further discussion of the traffic issues around this project.

After a discussion of whether or not to have a public hearing at the December meeting, a decision was made to hold a public hearing in December.

Ms. O'Meara drew the Board's attention to the Fire Chief's recommendation to extend the water lines to Sawyer Road.

Mr. McCullough noted that the applicant had the water flows re-tested in response to the Chief's letter, and it was found that the water flow at the hydrants slightly exceed the required flow.

The consensus of the Board was not to require the developer to tear up all of Eastman Road to put in a new water main.

Mr. Hatem made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Wyley Enterprises LLC for Major Subdivision Review and a Resource Protection Permit for Eastman Meadows, a 46 unit condominium with clubhouse and 1 single family lot, located at 68 Eastman Rd be tabled to the regular December 18, 2007 meeting, at which time a public hearing will be held.

Mr. Godfrey seconded the motion and it was approved, 6-0.

Mr. Hatem moved to adjourn, and was seconded by Mr. Kennealy. By a vote of 6-0 the meeting was adjourned at 9:40pm.

Respectfully submitted,

Hiroshi Dolliver
Board Secretary