

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD

March 18, 2008

7:00 p.m. Town Hall

Present: Barbara Schenkel, Chair  
Scott Collins  
Thomas Dolan

Elaine Falender  
Peter Hatem  
James Huebener

Absent: Beth Richardson

Also present was Maureen O'Meara, Town Planner

Mrs. Schenkel called the meeting to order.

She began by addressing the confusion regarding the discussion of the BA Wetlands Zoning Amendment. A Public Hearing on the Amendment will be held at the April meeting of the Planning Board, during which public comment is allowed. A public hearing will not be held tonight.

The minutes of the meeting of December 18, 2007 were amended to correct "my" to "Mr." Godfrey. They were accepted, 6-0.

The correspondence list was read. Two additional emails pertaining to the BA Wetlands Amendment were received, from Michelle Buckley and Karen Coker.

Maureen O'Meara was asked to clarify a letter from Oak Engineers on behalf of the Inn By the Sea. The changes they propose require amendment by the Planning Board for site plan approval. The Town Planner explained that the change won't delay ongoing construction because they can be split into two separate approvals to allow the walkway construction to proceed.

**OLD BUSINESS**

**Eastman Meadows** -Wyley Enterprises, LLC is requesting Major Subdivision Review and a Resource Protection Permit for Eastman Meadows, a 46-unit condominium plus one lot development 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, Sebago Technics, Inc. introduced Joel Fitzpatrick, Applicant; and Nate Taylor, Design Engineer for Sebago Technics, Inc.

Mrs. Schenkel asked Mr. McCullough to briefly outline changes that have been made from the original submittal.

Mr. McCullough said that Dale Knapp, Wetlands Expert, Woodlot Alternatives, had been asked to do the peer review. Mr. Knapp was present and spoke several times. Based on Mr. Knapp's conclusions, the wetlands on the property expanded, resulting in redesign of the project.

The specific buffers and setbacks required for the RP1 Wetlands, some of which were reclassified from RP2, resulted in the project being moved over. This concept plan was presented at the December 18, 2007 workshop. These changes were made in response to discussions at the Oct 16, 2007 public hearing. The total wetland alteration proposed is 13,000 square feet, which has been favorably reviewed by the DEP and the Army Corps of Engineers.

The majority of the impacts will occur on areas that are already basically cleared.

The net density calculations were explained; they were reviewed and concurred with by the Town Engineer at Oest Associates.

The affordable units have been increased from 5 to 6 by using the affordable housing bonus that allows one market rate unit for each moderate income affordable unit in excess of the affordable units required.

Color schemes on the duplexes have been adjusted per Planning Board request.

Twenty-six acres, or 65% of the property, are dedicated to open space; of that 72% is usable.

Construction is anticipated to occur in three phases.

A fence or planted buffer will be provided for Mary Brock's abutting property. The applicant will continue to work with her.

Peer review of the traffic analysis, by Tom Errico of Wilbur Smith Associates, concurs that Eastman Rd has the capacity to handle traffic expected from the development.

Traffic calming consistent with Town practice can be considered, if appropriate.

Road widening on the southerly side of Eastman Rd in conjunction with installing the sewer was studied in response to a question at the December meeting. There are physical limitations to widening because of mature tree growth that provide canopy, as well as steep embankments and possibly ledge. Also, widening may be counter-productive to encouraging slower speeds. The applicant is not recommending that this work be done.

A public information meeting for abutters is scheduled as part of the DEP Site Location review process and will be held on April 3rd in Town Hall.

A Natural Resources Protection permit for wetlands alteration is required. The Army Corps of Engineers will be involved.

Waivers previously requested to change the scale of the drawings and for the soil survey were considered reasonable by the Town Engineer, per his comments.

Mrs. Schenkel opened the Public Hearing at 7:45.

David Plimpton, 1000 Sawyer Road, is concerned that the ordinance has not been applied as intended regarding the net residential area computation. He questioned the density calculation by Oest Associates of undevelopable and/or unsuitable for development areas that he felt should have been deducted. He specifically noted access drives, RP2 wetlands and isolated areas. Mr. Plimpton submitted a map of the development with the areas in question highlighted.

Lisa Fernandes, a resident of Sawyer Road between Eastman and Stillman, shares Mr. Plimpton's concerns about the density calculations. She is also concerned about road safety on Sawyer Road, as a feed for Eastman. She feels that this stretch of road is currently unsafe, especially for pedestrians and cyclists. Ms. Fernandes is also saddened by the development of active agricultural land.

With no further comments from the public, Mrs. Schenkel closed the public hearing at 8:02 p.m.

Owens McCullough said that there had been a consistent application of net density issues as required by the ordinance, and that they were consistent with the ordinance as it has been applied historically.

Mrs. Schenkel stated that the code isn't clear about the right-of-way deduction because this is a condominium development.

Maureen O'Meara explained that condominium subdivisions are in essence one lot. They have their own internal road systems. Roads are the responsibility of the Association and consequently the creation of a right of way for a condominium road is rare.

A Board member questioned the area that should be deducted to calculate net residential acreage. Ms. O'Meara referred to the ordinance specifically listing parking lots as required to be deducted. The Ordinance also defines parking lots to be 3 or more spaces. Mrs. Falendar asked if sidewalks would be located within the right of way of single family subdivision roads. Ms. O'Meara said they would because otherwise they would be located on private property and the public would not have the right to walk there. Ms. Falendar asked if the area of the sidewalk with public access should be included with the road as a deductible area. Ms. O'Meara explained that this sidewalk included a public access easement in order to provide the public with a second access to the open space. Public accessways had not been deducted in the past.

Mr. Dolan asked if the Planning Board had deducted RP2 wetlands in the past. Ms. O'Meara said the Planning Board has not previously required that RP2 wetlands be deducted because they could be developed under the Permitted Uses List in the Zoning Ordinance.

Mrs. Schenkel expressed concern about the 20' rather than 22' road width. Mr. McCullough said the rationale for the narrower road width was based on having two means of access and because they're private roads. Mr. Huebener asked about the width of Cross Hill Rd and it was confirmed that it is 20' wide.

Mr. Hatem said the Board needs to balance minimum pavement width and public safety. Mrs. Schenkel asked if the Fire Chief had reviewed the road. Ms. O'Meara explained that the previous Fire Chief retired in January and the new Fire Chief will be approved by the Town Council March 25th, so there has not been a review by the Fire Department of the most recent plan. Mr. McCullough said he would go over the plan with the new Fire Chief. He also offered to use a software program where a virtual fire truck can drive the roads as designed.

Mr. Huebener asked about sightlines. Mr. McCullough said that sightlines improved when the access was moved. The applicant used the sight distance standards in the table in the ordinance. Mrs. Schenkel said she wanted a new letter from the Traffic Engineer on the sight distances.

As Oest Associates is waiting for more information before they can do a final review, Mr. Collins asked what information still needs to be provided to the Board.

Mr. McCullough explained that they wanted the Board's feedback tonight at a preliminary level before going forward with the actual utility plan, storm water design, and permits with the DEP.

Mr. Collins asked the applicant to go over each section in the original submission book and identify what had changed. Mr. McCullough reviewed each section of the original application letter and update, and reviewed the three waivers from the original application.

Mr. Collins asked if the applicant is requesting a road width waiver. Ms. O'Meara thought a waiver would be needed because the Subdivision road design standards are geared to single family subdivision roads.

Ms. Falender requested supplementary notes to the Community Impact Statement document regarding the impact of the road changes on the phasing of buildout. The applicant agreed to an update.

Mrs. Schenkel said she would like a new letter from the Fire Chief on the water pressure for fire protection. A Board member questioned conflicting numbers on the sewer flow generation. Mr. McCullough will request from the Public Works Director an update on the discrepancy in the peak flow calculation for the sewer.

Ms. Falendar asked about any recommendations from the Road Safety Working Group. Ms. O'Meara explained that that group had completed its work and submitted final report that identified pedestrian facility priorities on Shore Rd, Mitchell Rd and Fowler Rd. Mrs. Schenkel asked if the group had considered Eastman Rd and if they were aware of the project. Ms. O'Meara said the group focused on existing needs, although this area was designated as a growth area when the group did its work.

A storm water management report and calculation will be updated to reflect design changes and will be submitted.

The storm water infrastructure and design plan changes will reflect the current design.

Association documents will be changed to reflect the Public Works Director's requests to stipulate that the road will remain private.

The discussion of road width resumed. The Town Planner explained that previous condominium applications have never requested road width waivers. Road standards were written for single family subdivisions, not for condominiums. There is no precedent in Cape Elizabeth for the application of the road standards to condominiums. Mrs. Schenkel and Ms. Falendar expressed support for conforming to the local road standard of 22' wide. Mr. Hatem questioned if this is a local road. Mr. Dolan asked the applicant to include in their information the benefits to LEEDS certification with reduced impervious surface.

Mr. Collins asked for more input on road width standards. It was agreed to ask both the new fire chief and the Public Works Director.

Ms. Falender pointed out language that's fairly mandatory about road width in the subdivision ordinance.

The applicant agreed to speak with the new fire chief and report back at the April meeting.

Ms. Falender noted the absence of boundary designations for open space and for individual living units. Mr. McCullough agreed to have bolder lines drawn to identify property pins, and to delineate individual condominium units. Ms. Falendar noted that trees would be removed from the Sprague property as part of the road construction, which conflicted with the statement that the Sprague lot would be left in its natural state.

Mrs. Schenkel asked for reassurance that the developer has not disturbed the wetlands in the middle of the parcel. She asked if the knoll would be removed. Mr. McCullough said most of it would need to be removed for access.

Mrs. Schenkel questioned if the applicant could avoid altering 150 sq. ft. of wetland for the road adjacent to the Brock property. The applicant said they moved the road away

from the Brock property, resulting in the wetland impact, but could move it back. Mrs. Schenkel asked if part of the sidewalk could be removed in that area. Mr. Hatem noted that it is a small area of wetland alteration.

Mrs. Schenkel asked if the applicant would consider three units of low income as opposed to six of moderate income and then reducing the total number of units.

A discussion of density averaging in relation to the separate lot resulted in some confusion. Mrs. Schenkel pointed out that the farmhouse lot had frontage on Eastman Rd. Ms. O'Meara agreed that the revision created a conflict with a provision of the Open Space Zoning standards and the applicant agreed to redesign the lot.

Mr. Collins commented about the supplemental submission and responding, as necessary, to the recent comments from Oest Associates, and per their recommendation, to the letters of March 10, 2008 and Sept. 11, 2007, and the email of Sept 10, 2007, to make sure those comments are addressed as necessary. The applicant agreed to do this.

Mr. Hatem made a motion to table further action until the May 20<sup>th</sup> meeting at the request of the applicant instead of the April 15<sup>th</sup> meeting. Ms. Falender seconded, and the motion was passed, 6-0.

#### OTHER BUSINESS

**BA Wetlands Zoning Amendment** - The Planning Board will re-review a proposed amendment to the Zoning Ordinance that would reduce the RP1 Buffer from 250' to 100' for properties in the BA District which are served by public sewer, Sec. 19-10-3, Zoning Amendments.

Maureen O'Meara explained the four ways the zoning ordinance currently allows a 250' buffer to be reduced to 100', and the amendment, which would allow a fifth way. The amendment could make it possible to more efficiently develop the currently zone BA land and avoid possible pressure to zone additional land for business activities.

After a brief discussion it was decided to work on the language of the amendment at the next workshop session and to schedule a public hearing for the regularly scheduled meeting on April 15.

Tom Dolan moved that, based on the information presented, the Business A Wetlands Amendments that allow the RP1 Buffer to be reduced to 100' and that allow the expansion or change of nonconforming uses where there are no exterior changes, and the activity is permitted in abutting districts, located in Sec. 19-6-9 of the Zoning Ordinance, be tabled to the April 15, 2008 meeting of the Planning Board, at which time a public hearing will be held. The motion was seconded by Peter Hatem and was passed 6-0.

Tom Dolan made a motion to adjourn the meeting, which was seconded by all at 9:45.

Respectfully submitted,

Suzanne VanWye,  
Acting Planning Board Secretary