

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

July 20, 2010

7:00 p.m. Town Hall

Present: Peter Hatem, Chair
Elaine Falender
Barbara Schenkel
Carol Anne Jordan

James Huebener
Liza Quinn
Victoria Volent

Also present was Maureen O'Meara, Town Planner.

Mr. Hatem called the meeting to order.

Mr. Hatem called for corrections or additions to the minutes of June 15, 2010. There were no corrections and no additions. Mrs. Schenkel moved that the minutes be approved and was seconded by Ms. Falender. The motion passed, 7-0.

NEW BUSINESS

Portland Water District S. Cape Pump Station Upgrade Resource Protection Permit -The Portland Water District is requesting a Resource Protection Permit for an upgrade to the Southern Cape pump station, located on Spurwink Ave, for work such as new piping, underground electrical conduit, a new utility pole and paving within the RP1 buffer, Sec. 19-8-3, Resource Protection Completeness and Public Hearing.

Mr. Chris Dwinal, Wright-Pierce Engineering, gave a presentation on the project. A portion of the project is located within the RP-1 buffer zone, including a below ground concrete vault, underground piping, a new utility pole, underground electrical conduit and wire, and paved/gravel drives. The purpose of the upgrades is to allow the combined wastewater and groundwater that currently overflows to Peabbles Cove to be pumped to the WWTF for treatment prior to discharge during wet weather events. The update work needs to start by September 2010 and be completed by September 2011 to comply with renewal of the Maine DEP discharge permit.

Ms. Falender made the following motion, seconded by Mrs. Schenkel:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Portland Water District for a Resource Protection Permit to construct upgrades required by the

Maine DEP at the Southern Cape Pump Station located on Spurwink Ave be deemed complete.

The motion passed by a vote of 7-0.

Mr. Hatem opened the Public Hearing.

No comments were made.

Mr. Hatem closed the Public Hearing.

The Board started to discuss the project.

Ms. Falender asked the applicant if they feel comfortable with the Town Engineer's letter suggesting they may need to obtain NRPA and DEP permits.

Mr. Dwinal stated that they might slightly change the location of the pole or eliminate gravel if necessary to minimize the need for additional permits.

Mrs. Schenkel suggested creating a condition to approval to recognize this change to the plans.

Mr. Huebener said that this is just a minor change and asked if the contractor was hired already.

Mr. Dwinal said that they had a pre-bid meeting today, and bids due in two weeks, so there is time for addendum in the next two weeks.

Mrs. Schenkel asked how the project would effect the vegetation.

Mr. Dwinal answered that they will need to remove some bushes, but will preserve large trees and overall minimize vegetation removal.

Ms. Falender made the following motion:

Findings of Fact

1. The Portland Water District is proposing upgrades required by the Maine DEP at the Southern Cape Pump Station located on Spurwink Ave, which require review under Sec. 19-8-3, Resource Protection Permit.
2. The Town Engineer is recommending revisions to the plans.

3. The application substantially complies with Sec. 19-8-3, Resource Protection Regulations.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Portland Water District for a Resource Protection Permit to construct upgrades required by the Maine DEP at the Southern Cape Pump Station located on Spurwink Avenue be approved, subject to the following conditions:

1. That the plans be revised per the Town Engineer's letter dated July 13, 2010;
2. That the applicant obtain any required state or federal permits prior to commencement of construction;
3. That the applicant shall be permitted to make minor adjustments in the location of the gravel area, the positioning of the driveway or the location of the utility pole, provided that no such changes have any material impact on the wetland area; and
4. That there be no alteration of the site or issuance of a building permit until the above conditions have been met.

Ms. Quinn seconded the motion and it was approved 7-0.

Evergreen Memory Care Site Plan Amendment - Lon Walters is requesting an amendment to the previously approved site plan for the facility under construction at 126 Scott Dyer Rd to change the name from Evergreen Memory Care to Cape Memory Care, Sec. 19-9, Site Plan Amendment.

Mr. Walters presented that the original application was under Woodlands Assisted Living, but the Planning Board declined to approve that name. They changed the name to Evergreen Memory Care (same as their facility in Waterville), but that is the same name of a facility located in Saco operated by another company. They came up with the Cape Memory Care name and this is okay with the Fire Chief and Police Chief. They printed new stationary with the Cape name. He said that perhaps they should have checked it first, and his excuse was that this is a fast-tracked project.

Mr. Hatem asked if he has any signage to show us.

Mr. Walters said that they haven't done it yet, but assured the Board that it will be done according to code on setbacks and lighting and will be located according to the Site Plan. Everything will be done according to the ordinance.

Mr. Hatem expressed his concern that only the Cape name should show up on the site, in order to avoid the original public safety concerns.

Mrs. Schenkel clarified that the Planning Board didn't arbitrarily said no to Woodlands as a name, but because that is already a street name, there is a potential for misunderstanding in an emergency. Cape Memory Care should be shown on the sign without mentioning Woodlands.

Mr. Walters said that the sign they are using is a temporary sign and they reused it from another project. The new sign will be Cape Memory Care. Woodlands is the name of their company and has a presence in the state. He showed an example of the Village Crossings sign.

Mr. Hatem said that, in principle, the Village Crossing sign is okay, but he wants the Fire Chief and the Police Chief to see the new sign, so there will not be any confusion. He would vote to approve, with review of the new sign.

Ms. Quinn said that she believes it is confusing if the Woodlands is part of the "name tag". She has concerns with their website too. She asked that the website be displayed at the meeting. The website was projected onto the wall. The website prominently features the name Woodlands Assisted Living, followed by Cape Memory Care in smaller letters.

Mrs. Volent is concerned with how the Woodlands name is portrayed.

Mr. Hatem asked the applicant to come forward and show how the sign looks. Show me the graphic! He doesn't feel comfortable when he sees the website.

Mr. Walters said he will comeback with the sign.

Mrs. Schenkel suggested to the applicant to work with the Town Planner and show her the sign long before the next meeting.

Ms. Quinn made the following motion:

BE IT ORDERED that, based on the previously approved plans and materials, the request submitted and the facts presented, the request of Lon Walters to change the name of Evergreen Memory Care, located at 126 Scott Dyer Rd, to Cape Memory Care, be tabled to the August 17, 2010 Planning Board meeting.

Mr. Huebener seconded the motion and it passed 7-0.

OLD BUSINESS

Shore Road Path Site Plan/Resource Protection Permit - The Town of Cape Elizabeth is requesting Site Plan Review and a Resource Protection Permit to construct the Shore Road Path, a 2 mile long off-road path located on Shore Rd from the old entrance to Fort Williams (next to the pond) to the Town Center, Sec. 19-9, Site Plan Public Hearing, and Sec. 19-8-3, Resource Protection Permit Public Hearing.

Ms. Quinn noted that she has done fundraising for the path but she doesn't think it would influence her impartiality.

Mr. Hatem said that he doesn't see any problem with this.

Mr. Hatem asked the applicant to introduce any new information they have.

Mr. Paul Burbage, Amec Associates, explained some concerns from their meetings with the Barber family and Mr. McDonough, who sent in his concerns in writing as well. To respond to their comments, we are working on a construction easement with the Barber family, but otherwise moving the path into the right-of-way. In response to Mr. McDonough's concerns, the path is being moved further from the traveled surface of Shore Road to preserve a buffer of rosa rugosa. In response to comments made at the last meeting questioning parking, no additional parking needs are anticipated, as a majority of users will come from the adjacent neighborhoods. Parking is available at each end of the path at Fort Williams and the Town Hall.

Storm water impacts must be mitigated per state requirements and we will be treating stormwater runoff from existing paved areas at Fort Williams and behind the High School. Stormwater in the area of

the path will be addressed using a variety of methods based on the physical characteristics of the area, and will include erosion control, check dams and silt fencing.

We met with Steve Bradstreet, Oak Engineering, who did the third party review and all his comments will be addressed.

John Mitchell (Mitchell Associates) in his presentation showed the places where modifications were suggested.

Mr. Hatem opened the Public Hearing.

Bill Downes, 15 Old Colony Lane - Mr. Downes said that the Town Council has not approved the project. He is concerned about the beavers, who have raised the water level in the wetland; the bridge over the Pond Cove culvert and how there will be access to clean and maintain the culvert year round; maintenance in the summer to keep the bamboo growth from overtaking the sidewalk; and the crowded Belfield Road parking lot adjacent to Robinson Woods.

Nelson Silva, 11 Old Colony Lane - Mr. Silva is concerned about drainage and the safety of pedestrians and bikers mixing together. He thinks that the road is already too narrow and, with the addition of guard rails, cars will have no place to pull over in case of emergency. The path will take away space from the road. He also believes that the path is too narrow to be two way, as it should be minimum 12' wide to accommodate all the users. Adult cyclists should not use it. He believes that the Robinson Woods parking lot is too small to accommodate additional parking needs and therefore too dangerous.

Dan Freedman, 2 Todd Road - He would like to see a detailed construction plan and schedule and would like to know where materials and construction equipment are going to be stored.

Jim Tasse, 30 Cliff Avenue - He understands (and thinks that others understand it too) that the path is not for multi-use and will be used more like a sidewalk. AASHTO data shows that roads without sidewalks are twice as dangerous for pedestrians. He believes that all issues brought up today can be dealt with.

Katie Vaillancourt, 55 Stonybrook Road - She said that she supports the path as a motorist, a runner, and a pedestrian. The path will greatly improve the aesthetics and character of the road.

Mr. Hatem closed the Public Hearing.

Mr. Burbage said that they've already talked to Public Works Director, Bob Malley about maintenance and snow plowing and he didn't think it would be a problem.

Regarding ADA compliance. Mr. Burbage said that they've looked into this and there is no requirement to meet standards in case of trails, however, features of the trail have been designed to meet the spirit of the ADA standards.

Mr. Hatem asked if the schedule and any road closing will be on the Town's website.

Mr Burbage responded: yes.

Ms. Falender asked about cars moving to the side for emergency vehicles.

Mr. Burbage said that in case of emergency vehicles, cars needs to get out of the way as soon and as safely as possible and he doesn't see this as a problem here. Only 10% of the length of the path will have guardrail and only for short distances.

Mr. Huebener asked if culvert maintenance is currently accessed on Pond Cove.

Mr. Burbage's answer was yes, and the Town will be formalizing that relationship with an easement with Mr. McDonough.

Mr. Hatem asked if the removable guardrail is an issue.

Mr. Burbage's answer was no.

Mrs. Schenkel is concerned about serious cyclists knocking people down and would like to see some kind of signage saying something like "No cyclists please". Mountain bikers ride in Robinson Woods and have knocked people down.

Mr. Burbage said that it is not a likely incident as serious cyclists won't use the path anyway.

Mrs. Schenkel has concerns with added parking at Robinson Woods and would like to know how to prevent parking on the shoulder of Shore Road.

Ms. Quinn asked if parking is allowed on Shore Road.

Mr. Burbage said no.

Mr. Mitchell said that the path is designed for pedestrians. The standard width for a multi-use path is 10'. The "spandex" bikers said they won't use it because it is too narrow, and we have these comments on record.

Mr. Huebener backed that up as a "spandex biker". He would not ride the path. He only rides his bike on Shore Road with a big group. Otherwise, it is too dangerous.

Mr. Hatem suggested that the Town could deal with this later if it turns out to be a problem.

Mrs. Schenkel believes that this could be a problem and we should think about this now.

Ms. Falender thinks that the proposed conditions of approval responding to Mr. McDonough's concerns include far too many guesses, such as who can remove guard railing, how often can it be left out and if the town will receive calls asking for the guardrail to be removed. Can the condition be left out and still allow for a removable guardrail?

Mr. Burbage said that if the condition is left out, it won't preclude still doing it. MDOT may also say no to this guardrail option.

Ms. Falender asked about the bollard ownership.

Mr. Burbage said that we will give the bollards to him if it is condition or not.

Mrs. Volent asked about adding a stop sign at the end of Dyer Pond Road and Todd Road.

Mr. Burbage said that truncated domes will be installed where the path intersects these roads.

Ms. Quinn asked about Mr. Downes concerns of wildlife habitat.

Ms. O'Meara responded that, according to the Beginning with Habitat data from the state, which was also discussed by the

Comprehensive Plan Committee, that wetland has high-moderate value for wildlife and there is a specific record of a turtle. The area within 5' of the traveled surface of Shore Rd does not have wildlife habitat value, even if wildlife enter that area.

Ms. Quinn asked about snow removal.

Mr. Malley said that Shore Road poses special challenges now; most snow gets blown and taken away within 24 hours.

Ms. Falender made the following motion:

Findings of Fact

1. The Town of Cape Elizabeth is requesting Site Plan Review and a Resource Protection Permit to construct the Shore Road Path, an off-road 5' wide paved path located adjacent to Shore Road beginning at the old entrance to Fort Williams (by the pond) to the Town Center, which requires review under Sec. 19-9, Site Plan regulations and Sec. 19-8-3, Resource Protection Permit.
2. The Acting Town Engineer has recommended revisions to the plans.
3. The plans include planting plans on private property.
4. The project will also require a DEP Natural Resources Protection Permit and a Stormwater Law Permit.
5. The Town Council has approved the project, subject to available funding.
6. The Town has a long record of constructing roads and trails.
7. The application substantially complies with Sec. 19-9, Site Plan Regulations and Sec. 19-8-3, Resource Protection Permit.

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 Site Plan Review and a Resource Protection Permit to construct the Shore Road Path, an off-road 5' wide paved path located adjacent to Shore Road beginning at the old entrance to Fort Williams (by the pond) to the Town Center be approved, subject to the following conditions:

1. That the plans be revised per the Acting Town Engineer's letter dated July 14, 2010;
2. That the applicant obtains written permission for installation of plantings on private property from the property owners or that those plantings be eliminated from the approved plans;
3.
 - a. That the path extending from the north end of the McDonough property to the driveway will be relocated to abut the right-of-way line away from Shore Road in order to preserve most of the rosa rugosa growing adjacent to the traveled surface of Shore Rd;
 - b. That the area between the path and the exposed ledge, within the Town right-of-way, located south of the McDonough driveway, include ground cover plantings along the irregular edge of the ledge that is not part of the path surface.
 - c. On the southern side of the McDonough driveway, the path shall be constructed with a curb where it intersects the driveway to guide stormwater into a new catch basin, connected to pipe to be installed under the driveway and outlet on the north side of the driveway, to correct an existing stormwater flow and capture the increase from the path. The catch basin and pipe installation is subject to conveyance of a drainage easement over the McDonough property to the Town of Cape Elizabeth and subject to an easement from the owner of the McDonough property to the Town of Cape Elizabeth to allow cleaning and maintenance of the culvert leading to Pond Cove;
4. That the applicant obtain necessary state permits; and
5. That there be no construction until the above conditions have been met.

Ms. Quinn seconded the motion and the motion passed 7-0.

Mr. Hatem made a motion to adjourn and was seconded by Mrs. Schenkel. The board voted 7-0 to adjourn at 9:15 pm.

Respectfully submitted,

Aniko Varadi

Minutes Secretary