

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD

October 18, 2011

7:00 p.m. Town Hall

Present:	Elaine Falender, Chair	Liza Quinn
	Josef Chalot	Henry Steinberg
	Carol Anne Jordan	Victoria Volent
	Richard Olfene	

Also present was Maureen O'Meara, Town Planner.

The minutes of the September 20, 2011 meeting were approved as presented, 7-0.

OLD BUSINESS

Golden Ridge Subdivision Amendment (5th lot) - Golden Ridge LLC is requesting an amendment to the previously approved Golden Ridge Subdivision to add a fifth lot, located at the end of Golden Ridge Lane (U17-5, 50-6), Sec. 16-2-5 Amendments to Previously Approved Subdivisions Public Hearing.

John Mitchell of Mitchell and Associates represented Golden Ridge LLC. He showed an aerial photo of the parcel and then showed the amended subdivision plan that was approved by the Planning Board in May 2011. He explained that the current proposal is to add one more lot because the cost of rebuilding Golden Ridge Lane according to the Town's requirements, in May 2011, exceeded the feasibility of a two lot subdivision.

According to Mr. Mitchell, the roadway and all the prior utilities, etc will be unchanged from the May approval.

He does not feel the Town has the right to impose a pedestrian right of way on this project. There is no reference in the Subdivision Ordinance Open Space Impact Fee standard to easements. Previous approvals of Golden Ridge in 2004 and 2011 did not require an easement.

The applicant is opposed to a public trail across his property for the following reasons:

- 1-They feel this proposed trail to be of low value.
- 2- Environmental impact. It will go through wetlands, RP-2 and possibly RP-1 wetlands will be disturbed.
- 3- It may require a boardwalk, and that would be expensive. Who would have to pay for that?
- 4-DEP and Town Resource Protection Permits would be required to cross the wetlands.

5- An easement so close to a building envelope will have an adverse impact on the marketability of the lot.

6- Impact on the neighbors, and whether they would be in favor of this easement.

According to Mr. Mitchell, he had a letter from Lee Lowry which had the following points.

In 2004 the Planning Board relocated an easement to unburden a private lot.

In 2011, the Planning Board determined that the Town's interests were satisfied by a payment in lieu of land, and there has been no material change in this plan since then.

The owner of this parcel purchased it because of its size and private nature. He does not want a public trail to infringe on the private nature of the land. If the trail were to be located in the setback area of lot 4, it would show no consideration for the privacy of the owner of that lot. In May 2011, the Planning Board required us to put a note on the plan restricting activity outside the building envelope. Putting a trail in that area would be inconsistent with the restriction placed upon them. Finally the marketability will be affected by the reduction of privacy for these lots.

Lee Lowry, Attorney with Jensen and Baird, spoke next. He feels that these trails will have a detrimental effect on the value of the property. He claims there is nothing in the Open Space requirement to say that a trail easement is required. In 2004, the Board previously rejected a parcel of Open Space on Lot 5.

Ms. Falender opened the public hearing.

Ms. Leslie Young of 8 Golden Ridge Lane (Lot 2) said she and her husband are totally opposed to this new trail. She said there is already a very nice trail in place. This trail being proposed that would go down the new road would be a problem because people would cut through their property. They already cut through the Young's property. People do not respect private property. We often have people who have become lost come into our yard. A lot of the vegetation has already been cut and you would have to cut more if you make those trails. We are totally opposed to these trails.

Ms. Volent asked Ms. Young to return to the podium and answer a question about whether she is also opposed to the proposal labeled Option 1.

Ms. Young is opposed to any location because there is a perfectly good trail already. She doesn't see people honoring it.

No one else came forward to speak, so Ms. Falender closed the public hearing.

Ms. Falender asked Ms. O'Meara to follow up on her meeting with the attorney for the Town, John Wall. Mr. Wall concluded that if the Planning Board wants the trail there is no legal impediment to that option. The Board could order that the developer deed the fee interest in that strip of land. Ms. O'Meara then summarized her calculation of the square footage of the proposed easement required to put the trail in Option 1, and the conclusion is that it is not enough to fulfill the required 25,090 sq. ft. for the addition of 2 lots.

In response to a question from Mr. Olfene, Ms. O'Meara cited some studies that show that proximity to trails actually enhance property values.

Ms. Jordan said that there is a difference between proximity to a trail and having one go across my property. She agrees with the real estate person who says it will affect the value of the land. She sees people every day who do not respect private property.

Ms. Falender is concerned that most of the objections so far have not taken into consideration Option 1.

Mr. Mitchell said again that Option 1 would require a boardwalk, but not the section on Golden Ridge property. Just off the subdivision, it is all wetlands.

Ms. O'Meara confirmed that there is wetland to be crossed when you get off the Golden Ridge property. The Town has routinely built boardwalks and gotten permits for them. There is no recommendation that the applicant pay for any of the boardwalks.

Ms. Falender noted that if they take the easement, it will be a trail to nowhere right now. She would like to know if they can take the easement and reserve the right to build the trail only when the rest of the trail is ready to be extended all the way through to Route 77. She does not want the trail built until there is access all the way to Route 77.

Ms. O'Meara agreed that there is precedent that the Board could specify that the trail not be built until such time as it is through to Route 77.

Mr. Mitchell wants to say that no matter which option you take, there will be wetland impact and boardwalk. If this Board decides on an easement, the least favorite option is Option 1. It would put this easement right next to the house location and who would want that?

Ms. Volent noted that when the Board approved the plan in May 2011, they did not have the benefit of the opinion of the Conservation Commission. We have heard from Mr. Mitchell and Mr. Lowry who are strongly opposed to the imposition of any trail easement. She looked at Option 1, which was favored by the Conservation

Commission, and can see that it will be mostly on dry land and have minimal environmental impact. She was concerned about the impact of that trail on the value of the project. She noted the trail that goes through Broad Cove, goes through back yards. She doesn't see that the Broad Cove trail has had an adverse effect on values. She does not see this trail as an unfair burden on this applicant's property. She also cited the Comprehensive Plan and the Subdivision Ordinance, as sources of support for her recommendation to adopt Option 1.

Ms. Jordan said there is a need for both parties to be willing to have an easement. She does not like to force the applicant to participate.

There was further discussion by the entire Board about which option would be least harmful to the development and to the environment. Mr. Mitchell was clearly not in favor of Option 1, but the Board preferred it.

Ms. Quinn made the following motion:

Motion for the Board to Consider

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Golden Ridge LLC to amend the previously approved Golden Ridge Subdivision and add a fifth lot at the end of Golden Ridge Lane be approved, subject to the following conditions:

1. That the applicant provide a pedestrian easement to the town located across the northern boundary of lots 3 and 4 in a form acceptable to the Town Attorney and signed by the applicant.
2. That the applicant provide a performance guarantee to the town in an amount acceptable to the Town Engineer, a form acceptable to the Town Attorney and all acceptable to the Town Manager.
3. That a road maintenance agreement be provided in a form acceptable to the Town Attorney, signed by the applicant and recorded in the Cumberland County Registry of Deeds.
4. That there be no alteration of the site nor issuance of a building permit until the above conditions have been met and the subdivision plan has been signed by the Planning Board and recorded in the Cumberland County Registry of Deeds.

Ms. Volent seconded the motion.

After a suggestion from Mr. Chalot, Ms. Quinn amended condition 1 to read:

1. That the applicant provide a pedestrian easement to the town located across the northern boundary of lots 3 and 4 consistent with Option 1 of the Conservation Commission's memo dated October 12, 2011, in a form acceptable to the Town Attorney and signed by the applicant.

Ms. Volent seconded the amendment.

Ms. Falender requested that the following paragraph now read:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Golden Ridge LLC to amend the previously approved Golden Ridge Subdivision as approved by the Planning Board in May 2011 and add a fifth lot at the end of Golden Ridge Lane be approved, subject to the following conditions:

Ms. Volent seconded the amendment.

Ms. O'Meara asked if the Board wanted to add findings of fact to the motion. After a brief discussion, Mr. Chalot proposed the following amendment:

#### Findings of Fact

1. Sec. 16-3-1 (q) establishes an Open Space Impact Fee as a standard of subdivision review. The standard requires that open space be provided for each new lot in a subdivision. The Planning Board reviews the application that is currently before it for compliance with the standards of the Subdivision Ordinance.
2. The Open Space Impact Fee is based on the amount of public land available to current Cape Elizabeth households. Each new subdivision lot is assessed a fee equal to the amount of land needed to maintain the community standard of open space. The Open Space Impact Fee is periodically updated and adopted by the Town Council in the Town Fee Schedule. The current fee requires the payment of \$4,320.00 dollars per lot or 12,545 sq. ft. of land per lot. The Planning Board has the authority to determine if land or money will be provided to comply with the standards of the Open Space Impact Fee.
3. The Conservation Commission has recommended that land in the form of a pedestrian easement would be a valuable addition to the Town Greenbelt System as further described in a memo and map dated October 12, 2011. The recommended greenbelt trail connection would provide public connections to Great Pond and the BA neighborhood business district for the lots in the

subdivision and for adjacent neighborhoods, which is typical for all Town Greenbelt Trails.

4. Provision of a pedestrian easement as part of the Subdivision Review of the Golden Ridge Subdivision Amendment is a fair, equitable and reasonable condition to preserve the community standard of open space.
5. A typical pedestrian easement is 15' wide and accommodates a 5' wide pedestrian trail. This easement can be located within the proposed 30' setbacks of the proposed lots without constraining the building envelopes on the lot. The pedestrian easement can also be located within the setback so that a minimum of 15' of width remains for plantings to buffer the pedestrian easement from the proposed building envelopes.
6. Proximity to pedestrian trails and open space are often used to market home lots. Studies have demonstrated that proximity to a greenbelt trail or open space on average increase lot values approximately 10%. The Cape Elizabeth Comprehensive Plan identifies open space as a high priority, and town residents identified open space as a high priority in the public opinion survey conducted for the Comprehensive Plan.
7. Some Town Greenbelt Trails have been constructed in wetland areas to provide pedestrian connections and are allowed under the Zoning Ordinance with a Resource Protection Permit.

Ms. Quinn accepted the motion as a friendly amendment and Ms. Volent seconded.

Ms. Jordan asked about whether the trail will satisfy the open space requirement.

After a discussion about the amount of land and/or money needed to satisfy the open space requirement, and at the urging of Mr. Lowry, the Board agreed to take the entire requirement in land (easement) rather than a combination of land and money.

Ms. Falender was concerned about leaving any of the details vague. She wants the Board to either table the application to a later date, or to be specific about where the easement will be situated.

Mr. Mitchell said the Applicant does not want the application to be tabled.

A suggestion was made that the Town would take a 30 ft. easement along the northerly line of Lots 3 and 4 and then a small parcel on the south easterly line of Lot 4.

Mr. Mitchell was opposed to that idea and requested that they keep the easement to 15 ft along the northerly line and then take a larger portion of the southeasterly side of Lot 4.

Ms. O'Meara wrote a condition for the Board to consider:

That the location of the easement be along the northern boundary line of lot 3 and 4 , 15 ft. wide, and also an additional area of easement to equal 9260 sq. ft. located along the southeastern corner of Lot 4.

Mr. Steinberg made the following motion to amend condition 1 of the motion already on the table:

He incorporated the language " That the location of the easement be along the northern boundary line of lot 3 and 4 , 15 ft. wide, and also an additional area of easement to equal 9260 sq. ft. located along the southeastern corner of Lot 4." by reference to the language as on the tape. And that the public access to the land be delayed until the connection to Route 77 is made.

Ms. Volent seconded the motion and Ms. Quinn accepted the motion as a friendly amendment.

The Board voted to pass the motion by a vote of 6-1.

The final version of condition 1 is now:

1. That the applicant provide a pedestrian easement to the town located across the northern boundary of lots 3 and 4 in a form acceptable to the Town Attorney and signed by the applicant. That the location of the easement be along the northern boundary line of lot 3 and 4 , 15 ft. wide, and also an additional area of easement to equal 9260 sq. ft. located along the southeastern corner of Lot 4. And that the public access to the land be delayed until the connection to Route 77 is made.

## NEW BUSINESS

**Fox Run Farm Resource Protection Permit** - Stephen and Patricia Bothel and Robert Bothel are requesting a Resource Protection Permit to alter 7,100 sq. ft. of RP1 Buffer to plant blueberries, located at 90 and 98 Ocean House Rd (U26-6-5), Sec. 19-8-3, Resource Protection Permit Completeness.

John Mitchell of Mitchell and Associates represented Steve, Pat and Robert Bothel in the request for a blueberry operation at Fox Run Farm. He showed an aerial photo of the property. There is a Site Plan showing existing conditions. He noted the slope of the land and the RP-1 wetland. He said the edge of the RP-1 wetland is an RP-2 wetland. He showed the delineation of the 250 ft. buffer of the RP-1 wetland on the plan and the existing blueberry operation. He also showed photographs of the blueberry fields, and of the trees in the buffer area that are proposed to be removed. He demonstrated where the triangular parcel is situated where they want to remove the trees and plant blueberries. He said the triangle contains 7100 sq. ft. of buffer. He said there are exactly 36 trees within the 250 ft. setback area that are proposed to be removed. The trees are hemlock, oak, beech and a single white pine.

The request is to cut the trees and plant blueberries. It is critical for the amount of sunlight needed to grow the blueberries, that the trees need to be removed. They shade the plants.

Mr. Mitchell also said they are proposing as mitigation a 50 ft. strip of land and vegetation that would be forever protected.

Ms. Falender asked what would be in the protected parcel.

Mr. Mitchell said it would be a 50 ft. wide easement to protect only what is now growing there and they do not plan to plant anything new in that area.

Ms. Falender opened the public comment period, and since no one came forward to speak, the public comment period was closed.

Ms. Volent asked about the prior application, and was told that this is a new application and that the prior one was not deemed complete, so they are starting anew.

Ms. Quinn made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Stephen and Patricia Bothel and Robert Bothel for a Resource Protection Permit to alter 7,100 sq. ft. of RP1 buffer to plant blueberries on land located at 90 Ocean House Rd be deemed complete.

Ms. Jordan seconded and the motion carried, 7-0.

Mr. Chalot noted that it seems like a lot of work for a 40 ft. piece of land. Why not shift it all over towards the open field.

Mr. Mitchell replied that the space has been dedicated as open space for cattle.



If these trees can't be removed, it will eliminate a very large area of the blueberry operation because of the sunlight.

Ms. Falender is concerned about the drainage into the wetlands. She is concerned about fertilizers and that the drip method of irrigation need to be spelled out as conditions of the approval. She is also concerned about the impact of foot and tractor traffic on the accessway over the wetland setback area.

Mr. Mitchell said it is an existing pathway, and they plan to allow the public to use it only on foot.

Mr. Chalot asked if it is possible to predict the possible traffic.

The reply from Mr. Salve is that no increase of tractor traffic will occur beyond what already exists to mow the grassy areas. No mechanical means will be used in the harvest of the blueberries.

Ms. Quinn proposed a site walk.

Mr. Steinberg was questioning how much extra runoff would be generated by the removal of the trees. He said that trees absorb a lot of runoff and wants to know how much that would be.

Mr. Mitchell replied that they have designated a 50 ft. parcel of land as mitigation.

Ms. Falender asked if the area will be plowed and blueberries planted after the trees are removed. And she asked how they will keep the soil from silting down into the wetland.

The reply was that grass will be planted between the rows, it won't be bare dirt.

A site walk was scheduled for Friday, October 21, 2011 at 7:30 am.

Ms. Jordan made the following motion:

BE IT ORDERED that the above application be tabled to the regular November 15, 2011 meeting of the Planning Board, at which time a public hearing will be held.

Ms. Quinn left the meeting.

**Powers Resource Protection Permit** - Colin Powers and Eoin LLC are requesting a Resource Protection Permit to fill 669 sq. ft. of wetland to accommodate construction of

a single family home located at Sunrise Drive and Lighthouse Point Rd (U14-36G), Sec. 19-8-3, Resource Protection Permit Completeness

Bob Metcalf of Mitchell and Associates presented for the applicant. He showed a plan of the parcel. The applicant obtained a parcel of land on Lighthouse Point Road to gain access. The lot then became a conforming lot, and he now has to comply with a 30 ft. setback requirement on the side and the front.

The parcel has two areas of wetland. One is RP-2 and the other is RP-1. Because there is less than 2 acres of RP1 wetland, they are able to reduce the wetland setback to 100 ft. There is also a 30 ft. wide water district easement across part of the land. There is a footpath across the property that follows the water district easement.

The footprint is now reduced to 1229 sq. ft because of the setback requirements. The footprint is totally located in the upland. In order to construct the house, they need an area around the house to build and maintain it. They would build a retaining wall to contain any further impact on the wetland. The driveway will cross a small portion of the wetland, with a total impact of 669 sq. ft. for the house and driveway.

The septic system and leach field will go partly under the driveway and partly under the water district easement.

Mr. Metcalf showed a sketch of the house that would be constructed. He also outlined the drainage and the grades of the site. They will relocate the footpath and attempt to minimize the impact on wetland and vegetation.

Ms. Falender opened the meeting for public comment on completeness. Since no one came forward, the public comment period was closed.

Ms. Volent asked about the location of the driveway.

Mr. Metcalf said it would be off Lighthouse Point Road, and they have a driveway access permit from the Public Works Director.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of EOIN LLC for a Resource Protection Permit to alter 669 sq. ft. of RP2 wetland to accommodate construction of a new single family home located at 7 Lighthouse Point Rd be deemed complete.

Ms. Volent seconded and the motion passed, 6-0.

Ms. Falender opened public comment on the merits of the application. No one came forward, so the public comment period was closed.

A site walk was scheduled for Friday October 28, 2011 at 7:30 am.

Ms. Falender asked about the path.

Mr. Metcalf said it will not be a formal easement, just that Mr. Powers will allow the neighbors to continue to cross.

Ms. Falender asked about the building envelope location.

Mr. Metcalf said that the house sits right at the setback lines. They plan to clear right up to the property line.

Ms. Jordan made the following motion:

BE IT FURTHER ORDERED that the above application be tabled to the regular November 15, 2011 meeting of the Planning Board, at which time a public hearing will be held.

Mr. Chalot seconded the motion and it carried, 6-0.

**Inn by the Sea "600 Cottage" Site Plan Amendments** - Inn by the Sea LLC is requesting amendments to the previously approved Site Plan for the Inn by the Sea, located at 40 Bowery Beach Rd, to demolish and rebuild the "600 Cottage," Sec. 19-9, Site Plan Amendments Completeness.

Steve Bradstreet, with Oak Engineers, represented the Inn by the Sea. He said they had received approval from the Board last December for demolition and rebuilding of the existing "600 Cottage". The change is that they had two internal stairwells, and now they want to have two external stairwells to give additional space. They have also eliminated the basement. They will keep the existing shed.

He showed the walkways and the detailed landscaping plan. All utilities, sewer water storm drain are unchanged. The wedding tent, and service tent will be the same. They have changed the configuration, but not the square footage. The impervious surface is still in the positive numbers.

Mr. Scott Teas from TFH Architects has met with Bruce Smith and the State Fire Marshall. He said the law is that they have to provide two methods of egress. They have shifted a staircase and added an elevator. They plan to resubmit the plans next week so they can have a public hearing in November.

Mr. Bradstreet said they are asking to resubmit plans at the November 15, 2011 meeting.

Ms. Falender opened the public comment period, and no one came forward to speak. She closed the public comment period.

Ms. Falender questioned the applicant's interpretation of Mr. Bray's letter about the traffic impact.

Mr. Bradstreet said that there are currently 6 2-bedroom apartments in there, and they will change that to 8 singles and 2 doubles. There will be the same number of bedrooms in the end.

Ms. Falender also asked about the septic system and whether the corrections have been made.

Mr. Bradstreet said all those corrections have been made.

Mr. Olfene asked how the changes to the building will affect the landscaping.

Mr. Bradstreet said the landscaping will be adjusted to accommodate the changes. No more trees will need to be removed.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Inn by the Sea LLC for Site Plan Review to build a new "600 cottage" building located at 40 Bowery Beach Rd be tabled to the regular November 15, 2011 meeting of the Planning Board at which time a public hearing shall be held.

Mr. Steinberg seconded the motion and it passed, 6-0.

The Board voted 6-0 to adjourn at 10:10 pm.

Respectfully submitted,

Hiroshi Dolliver  
Minutes Secretary

