

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD

March 28, 2013

7:00 p.m. Town Hall

Present: Victoria Volent, Chair  
Peter Curry  
Elaine Falender

Carol Anne Jordan  
Henry Steinberg

Absent: Josef Chalot, Liza Quinn

Also present was Maureen O'Meara, Town Planner.

Ms. Volent opened the meeting and called for the approval of the February 25, 2013 minutes. The minutes were approved as presented, 5-0.

Town Planner's Report: Ms. O'Meara said the Conservation Commission is in the middle of its Greenbelt Plan. The current Greenbelt Plan was adopted in 2001, so it needs updating. It is still a work in progress, and all the work is done in a public setting. They have not made any conclusions yet. The Planning Board has a training workshop next Tuesday night and most of the members of the Conservation Commission will be joining in.

The Building Permit notification amendment has been preliminarily drafted by the Ordinance Committee and will go to the Town Council for their April meeting. The Planning Board will probably get it at their May workshop. There will also be a proposal to look at the definition of the normal high water mark of the Shoreland Zone.

OLD BUSINESS

**10 Clinton Rd Private Accessway Permit** - Winslow Pillsbury is requesting a Private Accessway Permit to create a buildable lot located at 10 Clinton Rd, Sec. 19-7-9, Private Accessway Permit Completeness, Public Hearing.

Ms. O'Meara said the project is located at the end of Clinton Road. The new lot does not have 100 ft. of frontage on Clinton Road, so a Private Accessway Permit is needed. Each lot will have two acres, and since there is room for further subdivision, staff is concerned that further potential development has not been addressed. There are still concerns about the steepness of the driveway, and the Fire Chief is here to answer questions from the Board.

Jim Fisher and Lee Allen of Northeast Civil Solutions were there to present on behalf of the applicant. The applicant, Winslow Pillsbury, and the prospective buyer of the proposed lot were also present.

Mr. Fisher showed the plan of the Private Accessway and noted that this will actually reduce some impervious surface area by eliminating part of the existing driveway. The turnout is for the emergency vehicles. The existing driveway is steep and they have done engineering studies to evaluate how a fire truck can navigate that grade without scraping at the intersection of the driveway and Clinton Road. Prior to paving the new driveway they will run a test to be sure the fire truck can have access.

Storm water drainage is in the plans and this design will improve the existing storm water management. The house to be built will have a zero to negligible increase on the actual stormwater that is going into the pond.

Ms. Volent opened the meeting to public comment on the issue of completeness.

Jim Cassida with Normandeau Associates was there on behalf of the neighbor to the south, James Konkel. He is concerned about storm water drainage. There are storm water calculations for the driveway only, and none for the house to be built. He feels there is only partial information now without those calculations.

No one else came forward, so the public comment period was closed.

Ms. Jordan is also concerned that the calculations do not reflect a dwelling on the property.

Mr. Steinberg asked how the proposed dwelling will dispose of its water.

Mr. Fisher said nothing will change. The driveway is already there, and nothing will change. Anything in the area of the proposed house will flow to the pond as it already does. There will be no changes whatever. They have done the calculations for a potential house and it will go right into the pond.

Ms. Falender asked if they could redraw the building envelope to define more particularly where they would build a house.

Mr. Fisher replied that they do not want to restrict the availability to put the house anywhere.

Ms. Falender said they are asking us to assume that the house would go where they have indicated and that any storm water would flow into the pond. That assumption

can only be made if the building envelope is restricted to the portion of the property that flows into the pond.

Mr. Fisher said the only area of the building envelope that does not flow into the pond is so steep that no one would build there. He agreed that they could restrict the building envelope to eliminate that area.

Ms. Volent noted that the Town Engineer had also raised the issue that the storm water calculations did not take the dwelling into consideration. She said that will be addressed as they go forward.

Mr. Curry raised the idea of a proposed restriction on further development. He is concerned about the lack of assurance that the proposal could not be changed in the future. He proposes that there be a conservation restriction to ensure that further development does not come back in the future.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Winslow Pillsbury for a Private Accessway Permit to create a new lot at 10 Clinton Rd be deemed complete.

Ms. Falender seconded the motion and it was passed, 5-0.

Ms. Volent opened the public hearing.

Jim Cassida said this pond is not a storm water management pond. Any storm water that will go into the pond will affect the downstream from the pond. That goes over Mr. Konkel's property. He wants the Board to consider a long term build out for this property. He is concerned that access to the back portions of these lots will be cut off by this proposal. If Mr. Pillsbury would develop the back parcel, the only access would have to go along or near the property line with Mr. Konkel. That is of concern because of the drainage and wetland disruption that would occur in that area.

No one else came forward, so the public hearing was closed.

Ms. Falender said she would like to hear from the Fire Chief about whether he is satisfied with the driveway plan as things stand now.

Peter Gleeson, Fire Chief, said he relies on the Engineer to make the calculations to say it will work. They will take the truck out there before they pave to make sure it will work. They are worried about the angle of departure because the grade is steep. Since it is an existing driveway, he is willing to work with it, but if it was a new development,

he would be strongly opposed to the idea. He is concerned about the ladder truck dragging on the pavement at the start of the driveway.

Ms. Falender asked if it is the Chief's expectation that the angle of departure is going to be functional.

Mr. Gleeson replied that he cannot tell yet. He will rely on the Town Engineer to say if it is going to work. And they will take the truck out there before they pave to see if it will in fact be adequate without damage to the vehicle.

Ms. Falender is concerned that there will be a great deal of pressure to approve the driveway after all the work has been done. She is concerned that there is no certainty at this point.

Mr. Gleeson noted that it is an existing driveway and will only serve one house, so he is hesitant to require an expensive excavation project.

Mr. Curry asked how big a margin of error does the contractor have when he does this work. Is it fractions of an inch, several inches, or more?

Mr. Gleeson replied that at the last meeting with the Town Engineer, he did not feel comfortable with the drawings that have been presented to them. If the Town Engineer is not comfortable, Mr. Gleeson is not comfortable. He relies on the engineer.

Mr. Steinberg asked if the turnaround was acceptable.

Mr. Gleeson replied that the standard is called a B-40, and if that is met they have no issue with it.

Ms. Volent asked if the reduction in width of the turnaround to 18 ft. was acceptable.

Mr. Gleeson said he was comfortable with that.

Ms. Falender asked about the consequence of the truck scraping.

Mr. Gleeson said if the back of the truck is damaged it would interfere with their ability to fight the fire. They cannot use the ladders if the back of the truck is damaged.

Ms. Falender then asked if they cannot get up the hill, because of icing or other conditions, how would they fight the fire.

It was then mentioned that the hydrant shown on the plan is not, in fact, there. The closest hydrant is on Route 77.

Mr. Gleeson replied that the farther they have to go with hoses, the more difficult it is.

Ms. Falender has a concern about restricting further development. She does not feel that the proposed language will work. And she said the note says the Town made that restriction, when they did not.

Mr. Curry said he is in agreement that it is not only the further division of the property, but the further improvement of the back lands. He proposes a conservation restriction on all land to the north of the pond.

Ms. O'Meara noted that it is not the Town saying that no further division should happen, but saying that if there is any thought of future development, the applicant should come up with a master plan, or close the door permanently. She agrees that the current proposal is not a permanent closure.

Mr. Fisher noted that the applicant and the buyer of the lot have gone on record many times to say they have no further plans to develop this property.

Ms. Falender then said that it would need a third party to have any binding effect. A statement of intent is not binding. She then asked if the applicant would prefer that the Board put a binding restriction of the property or would they prefer to bring us a plan for further build out. The choice is the applicant's.

Mr. Fisher said that both parties have said multiple times that they have no intention of further development.

Ms. Volent then pointed out that the reason the Board needs this is because you are in the RC District and this lot is very large and can accommodate more than two homes. We always look toward the future for planning. Because this intent can be changed, and this lot can accommodate more building, we are asking for either a third party to guarantee the restriction or a build out plan.

Ms. Falender asked Ms. O'Meara if the Board should more clearly define the building envelope. She is noting that the building envelope now includes the driveway and part of the private accessway.

Ms. O'Meara said the building envelope goes around the private accessway. She also suggested that if the Board is restricting building to only the area that drains to the pond, you probably should also change the building envelope.

Ms. Volent said she wants a note on the plan that any drainage from the building be directed towards the pond. And she wants a note on Sheet 2 of the plans to say that the

turnaround shall be 18ft. wide. A condition should be added to remove the fire hydrant that does not exist from the plans.

Ms. Jordan said she would like to go to the Engineer's letter. She would like to go through the letter point by point to be sure all the issues have been addressed.

Mr. Fisher then addressed the letter dated March 13, 2013. He said that item 1 has been addressed and is all taken care of.

Ms. O'Meara then spoke up and said the Engineer has requested a drawing without an exaggerated scale.

Mr. Fisher said they have already provided that.

Ms. O'Meara read from the Engineer's letter that the Engineer still does not have what he has asked for.

Ms. Falender said the letter is dated March 13, so apparently the Town Engineer does not have it.

Mr. Fisher said the Engineer missed it. It is in the packet.

There was a long discussion about whether or not the drawing has been submitted as the Town Engineer has requested. The Board was clear that they want that condition to be satisfied, and Mr. Fisher was saying that he has provided what was requested, and he is willing to provide whatever the Engineer wants.

Mr. Fisher then addressed items 2 through 9 of the March 13 letter and said they have been addressed.

Ms. Falender made the following motion:

#### Findings of Fact

1. Winslow Pillsbury is proposing to create a new lot located at the end of Clinton Rd (U24-22), which requires review under Sec. 19-7-9, Private Accessway Permit.
2. The Town Engineer has identified revisions needed to the plans to insure that town standards are met.
3. A road maintenance agreement and reciprocal easements need to be established to assure maintenance of and access to the private accessway.

4. The Planning Board finds that a waiver of the 5% maximum slope requirement should be granted because the driveway is existing, it will provide access to no more than 1 additional lot, it will be reconstructed as needed to minimally accommodate town emergency vehicles, and strict adherence to the maximum slope standard will result in substantial reconstruction and disturbance of a much larger area.
5. The proposed private accessway will exceed the maximum 5% slope and should be reconstructed as needed to assure access by emergency vehicles, with special attention to the angle of departure for the ladder truck.
- 5a. The applicant has agreed that an easement affecting Lot A and Lot B on the property will be granted, enforceable by a third party which will restrict the properties to no more than one residence on each property.
6. A building envelope has been labeled on the plans, but no description of what the building envelope means has been included.
7. The application substantially complies with Sec. 19-7-9 Private Accessways, provided that the following conditions are met.

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Winslow Pillsbury for a Private Accessway Permit to create a new lot at 10 Clinton Rd be approved, subject to the following conditions:

1. That the plans be revised in accordance with the Town Engineer's letter dated March 13, 2013, and that a letter from the Town Engineer confirming that the plan has been so revised be submitted to the Town Planner.
2. That the road maintenance agreement and reciprocal easements be revised per the Town Attorney comments, signed and recorded prior to the issuance of a building permit.
3. That an enforceable conservation easement, or similarly enforceable restriction, be granted by the property owner to an outside third party, providing that a maximum of one single family residence and related accessory structures is permitted to be built on each of Lot A and Lot B as shown on the plans, and that no further development shall be permitted on either lot.
4. That after final grading and compacting of the driveway and before paving, the Fire Chief shall inspect the driveway to determine that a sufficient angle of departure has been created to allow unimpeded access by the ladder truck. No

paving shall occur and no occupancy permit shall be issued until the driveway has been graded to meet these requirements.

5. That the building envelope on the plan be modified by relocating the southerly boundary of the building envelope to a line parallel with the southern boundary as currently shown on the plan but moved northward to extend approximately along the southernmost boundary, and ten feet from, the existing garage on Lot A.
6. That a note be added to the plans that no portion of the private accessway is included in any building envelope and activities outside the building envelope shall be limited to the construction of driveways and utilities.
7. That any drainage, from any new building to be constructed on Lot A, flow to the pond.
8. That a ten foot naturally vegetated buffer be maintained around the edge of the pond provided that each residence shall be permitted an access pathway no wider than six feet.
9. On Page 2 of the plans, the depiction of the fire hydrant be removed.
10. That a note be added to Sheet 2 of the plans indicating the turnaround is 18 ft. wide.

Ms. Jordan seconded the motion, and after a brief discussion, the motion passed, 5-0.

#### NEW BUSINESS

**Robinson Woods II Resource Protection Permit** - The Cape Elizabeth Land Trust is requesting a Resource Protection Permit to construct trail improvements on Robinson Woods II and a lot located at the end of Canter Lane, Sec. 19-8-3, Resource Protection Permit Completeness.

Ms. O'Meara, Town Planner, introduced the project by saying that this property is in the RA and Resource Protection Districts, and the only areas the Board is looking at are in the RP-1 Wetland, the RP-1 Wetland Buffer, and the RP-2 District. There are existing trails on the property and the applicant is proposing to make changes to some existing trails and make some new ones. The Board is not looking at the entire trails, but just where changes are happening in wetland areas.

Chris Franklin, Executive Director of the Cape Elizabeth Land Trust then made the presentation for his organization. He showed a plan of the existing and proposed



paths, and explained their locations. He then zeroed in on the wetland areas. He spoke about the existing pathway that bisects a buildable lot on Canter Lane, and how the Land Trust wants to work with them to locate the trail along the edge of the property. The trails will all be located on land owned by the Land Trust, or over which they have been deeded access rights.

Mr. Franklin then addressed the Town Engineer's letter of March 13, 2013. He said the waivers have been requested, and they are keeping the wetland impact to a minimum. All of these sites require limited vegetative treatment, but it will mostly be cutting limbs of trees, not cutting down trees. He said they have the ability to meander the paths to go around the larger trees, so they are not planning to cut any trees over 8 inches.

Mr. Franklin then showed photos of representative areas to illustrate his points.

Mr. Steinberg asked about how the trails are delineated. He has gotten lost in there once before.

Mr. Franklin said they are widening the path to 4 ft., and will not be putting down wood chips in order to help the drainage stay on its natural course. They will put signs to mark the path, and make a map as well.

He spoke about putting down aluminum structures with small feet that will sit in the wetland. They will start before the edge of the wetland boundary, so they do not impact the edges of the wetland. In response to a question from the Board, he said they do not plan to put up railings. He also said they will not be bringing in the materials by tractor, but will have volunteers who will carry them in.

Ms. Volent asked for a reply to item 5 of the Engineer's letter.

Mr. Franklin said he has covered that in his presentation, but there is no Attachment K. He once again stated that they will be removing some vegetation, but it is their intent and to their benefit to remove as little as possible.

Ms. Volent opened the public comment period, but since there was no one in the audience, the public comment was closed.

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 Cape Elizabeth Land Trust for a Resource Protection Permit to construct wetland/water crossings and install/improve

trails located in RP1, RP1 Buffer and RP2 wetlands located on Robinson Woods II (Shore Rd) and at the end of Morgan Lane, be deemed complete.

Ms. Falender seconded the motion, and it was passed, 5-0.

The Board decided not to schedule a site walk.

Ms. O'Meara told the Board that the Conservation Commission will have their comment ready for the next Planning Board meeting. She also commented that better handicap access be planned into the boardwalks in order to make the paths more accessible, without creating further barriers.

Ms. Falender made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Cape Elizabeth Land Trust for a Resource Protection Permit to construct wetland/water crossings and install/improve trails located in RP1, RP1 Buffer and RP2 wetlands located on Robinson Woods II (Shore Rd) and at the end of Morgan Lane, be tabled to the April Planning Board meeting at which time a public hearing will be held.

Ms. Jordan seconded, and the motion passed, 5-0.

#### OTHER BUSINESS

**Subdivision Ordinance Overhaul** - The Cape Elizabeth Town Council has referred to the Planning Board a request to overhaul the Subdivision Ordinance as recommended in the Comprehensive Plan, Sec. 16-3-6(c) Amendments to the Subdivision Ordinance Public Hearing.

Ms. O'Meara said this was the last draft, and was a departure from what is usually done when an Ordinance is changed. In this case the entire Ordinance has been rewritten because there have been so many changes. It is the recommendation that the entire Subdivision Ordinance be replaced. The last time there was a major overhaul was in the 1960's. The revision was called for to bring our Ordinance in compliance with the State Subdivision Standards.

The major subdivision review submission list has had a substantial change. Major subdivisions have a two step approval process, preliminary approval and final approval. The current Ordinance requires a very detailed submissions as part of the preliminary approval. This revision allows more conceptual information, for the preliminary. When they have preliminary approval from the Planning Board, they then spend all the money for a final plan.

Ms. Volent opened the public hearing, and since no one was in the audience, the public hearing was closed.

Ms. Falender wanted to put on record a thank you to Ms. O'Meara. She did an incredible amount of work that it took to update this Ordinance. She did it in a way that is respectful of the State Ordinance, is clear, and changes only what is necessary.

Mr. Steinberg made the following motion:

BE IT ORDERED that, based on the new ordinance presented, the Cape Elizabeth Planning Board recommends that the new Subdivision Ordinance be adopted as a replacement to the Subdivision Regulation.

Mr. Curry seconded the motion and it was approved, 5-0.

The Board voted unanimously to adjourn at 9:15 pm.

Respectfully submitted,

Hiroimi Dolliver  
Minutes Secretary