

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

February 24, 2014

7:00 p.m. Town Hall

Present: Victoria Volent, Chair
Josef Chalot
Peter Curry

Carol Anne Jordan
Liza Quinn

Absent: Elaine Falender and Henry Steinberg

Also present was Maureen O'Meara, Town Planner.

Ms. Volent opened the meeting and called for the approval of the January 21, 2014 minutes. The minutes were amended and approved, 5-0.

NEW BUSINESS

Hilse Subdivision Amendment - Eric Hilse is requesting an amendment to the previously approved Mitchell Highlands Subdivision to divide a lot located at 27 Killdeer Rd to create a second lot with proposed access to Aster Lane, Sec. 16-2-5, Amendment to a Previously approved Subdivision.

Ms. O'Meara said this lot is part of the Mitchell Highlands subdivision, which includes Columbus Road and Killdeer Road. It was approved in the 1960's. Eric Hilse owns the lot which was laid out in that subdivision and now abuts the Cottage Brook subdivision. It can be subdivided into two lots, 46 and 46A, each with 20,000 sq. ft.

Bob Metcalf of Mitchell and Associates presented the project on behalf of the applicant. He showed maps of the lots and said they are proposing frontage on the Cottage Brook subdivision. He showed the access road that will serve the new lot. The original lot will retain frontage on Killdeer Road and the new lot will have frontage on Aster Lane, which will be constructed with utilities and will become a Town road. There will be a condition on the plan that no permit will be issued until Aster Lane becomes a town road. Mr. Hilse has no intention of doing anything on that lot right now.

They are also asking for the open space fee to be waived until the lot is sold or a building permit is issued.

Mr. Chalot asked if Chicory Way is only to access lot 39.

Ms. O'Meara said it is just an emergency access road that will have a gate for access by the fire trucks.

Mr. Curry was concerned about the informal agreement to extend utilities to this property.

Ms. O'Meara said it is not an uncommon occurrence during construction to provide utility access to abutters.

Ms. Volent asked whether they are setting a precedent by allowing the Open Space impact fee to be paid at a later date.

Ms. O'Meara said they have done it once before. And there will be a note on the plan and the Board can make it a condition of approval.

The Board agreed that since it is only one lot, a stormwater study was not needed.

Ms. Volent opened the public comment period on completion. Since no one came forward to speak, the comments were closed.

The Board decided not to hold a site walk. The decided to have a public hearing at the next meeting.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Eric Hilse for an amendment to the Mitchell Highlands Subdivision to divide lot 46 into 2 lots, with access for the new lot from Aster Lane, be tabled to the March 18, 2014 meeting of the Planning Board, at which time a public hearing will be held.

Ms. Quinn seconded the motion and it was approved, 5-0.

OTHER BUSINESS

Normal High Water Line Zoning Amendment - The Town Council has referred to the Planning Board a request to review the normal high water line definition, Sec. 19-10-3, Zoning Ordinance Amendments.

Ms. O'Meara said she had laid out the Board's journey in her memo. She expects the board to make a recommendation soon and hopes the bulk of the memo could be used in the report to the Council. The proposal before you tonight is the same amendment slightly restated. We have kept the Highest Astronomical Tide (HAST) for tidal waters. And kept the normal high water line as it applies to non tidal waters just as it was before. There is new language that says adjacent to tidal waters, the normal high water

line shall be the topographic line located at the Highest Astronomical tide, plus three (3) vertical feet upland. She also pointed out that there is a part of the proposal that says the actual boundaries of the district shall be determined by the physical features present at the site.

She also handed out a map she generated from data provided by Pete Slovinsky, showing HAST plus 3 ft as a red line. She said the map shows that where the red line goes inland it follows areas that are already in the resource protection district.

Ms. Volent opened the public comment period and said they would limit the time to three minutes each, so everyone has the same amount of time.

Sheila Mayberry of 30 Trundy Road is concerned that the discussions lacked content of how HAST +3 will affect the shore with respect to runoff if land becomes open to development. She passed around a map of the Trundy Point area and showed what is on the Shoreland Zoning map right now and another line is HAST. It shows a lot of land that would be lost in the Shoreland Zone. If HAST + 3 is passed without an amendment or acknowledgement this would allow development of another lot. We are trying to protect this area from runoff.

Debra Murphy of 24 Pilot Point Road said she understands and acknowledges that Ben wanted an easier way to find the starting point. She does not agree that HAST + 3 or a vertical measure works because of the different geology we have in the Cape. She believes that with the mapping technology we have today it would be really easy to identify the top of the cliff, the top of the beach at high tide, or the top of the bank. She understands that Ben wants a more easily identifiable starting point, but she thinks there are more straightforward ways we can accomplish that without a map change. She is concerned that there hasn't been discussion of the purpose of the Shoreland Zone to protect water bodies from pollution. It is for the protection of the environment.

She questions how a line on a zoning map could be 50 ft. wide when it is within a 50 ft. wide right of way. The basis of the new data relies on a 20 year data set. We are working on data that is over 13 years old.

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

Ms. Quinn wants to address the comments from the public so they realize that we hear your comments. The first response is for Sheila (Mayberry). The map that you brought shows a line of the Zoning Map, and those lines need to be field verified. If someone went out today using the most strict interpretation of our standard, she is confident that when it is field verified, it would be much closer to the water. In fact, in that neighborhood, when the line has been field verified it has been closer to the water. That blue line is not set in stone.

She said to Debra (Murphy) that Ben MacDougal was not looking for an easier way to do his job. He is looking for a way to do his job better for the Town and its citizens. Right now the vague definition opens the Town to lawsuits. If they take the strict interpretation, they are getting sued by people who want a more liberal interpretation and vice versa. They need a strict definition. Ben is actually doing his job better in asking for clarification.

Ms. Quinn also addressed the comment that HAST is based on old data. HAST is actually higher than the astronomical high tide for this year. It will probably be higher than the highest tide in any of the years in its cycle.

Mr. Curry likes the simplicity of the HAST + 3, but is concerned about some disconnects in the language. He does not think the normal high water line should still be in the definition. He would like the word to be extreme or something more logical. We have two categories of water, tidal and inland, which is not defined. Where is the line between the two?

He is concerned about the combination of a great pond and the Spurwink River in the definition of the Shoreland Overlay District. He would like the wording tightened up a bit.

Ms. Volent said that this wording comes from the State.

Ms. O'Meara said if we are going to rewrite this it will have to go back to another workshop. Normal high water line is a term that comes out of the State, and it is used over and over again. If we change that we have to open up our entire Shoreland Zoning ordinance. She suggests that it is just a name and you can decide what your normal high water line is.

She also said we have not looked at the inland waters. We have only been sued over the tidal waters. A wetland expert can identify where the line is between tidal and non-tidal waters. The definition changes when you don't have tidal waters anymore. HAST + 3 applies to tidal waters and when it changes, the normal high water mark for inland waters is in effect.

Ms. Quinn thought that all of the Spurwink River would be subject to HAST+ 3, and then said it is academic because it is all RP-1 Wetland anyway.

Ms. Jordan said she is ready to move this forward to public hearing.

Ms. Volent asked if all were agreed on the 3 ft rise. She then talked about the movements of the tide and the rise of the sea level that is predicted. She is in favor of 3 ft.

Ms. Jordan is in favor of 2ft. or even 1 ft.

There was more discussion about the bullet points and whether they should be combined or not.

Ms. Jordan made the argument that one had to do with tidal waters and the other with non-tidal and should not be combined.

Mr. Curry said he thinks 3 ft. makes sense.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the materials reviewed and the facts presented, the Planning Board tables the Normal High Water Line Zoning Amendments to the regular March 18, 2014 meeting of the Planning Board, at which time a public hearing will be held.

Mr. Chalot seconded the motion and it was passed, 5-0.

Ms. Volent opened the public comment on items not on tonight's agenda. No one spoke, so the comment period was closed.

The board voted unanimously to adjourn at 8:00 p.m.

Respectfully submitted,

Hiroshi Dolliver
Minutes Secretary