

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD

March 18, 2014

7:00 p.m. Town Hall

Present:	Liza Quinn, Acting Chair	Carol Anne Jordan
	Josef Chalot	Henry Steinberg
	Peter Curry	Victoria Volent

Absent: Elaine Falender

Also present was Maureen O'Meara, Town Planner.

Ms. Quinn opened the meeting and called for the approval of the February 24, 2014 minutes. The minutes were amended and approved, 4-0 (1 abstain and 1 late arrival)

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 Public Hearing.

Ms. O'Meara made note of what is in the memo before the Board. Proposing to replace the bulk of the normal high water line of the inland waters current definition and turn it into a normal high water line termed definition. For normal high water of tidal waters you will be replacing the current definition with the Highest Astronomical Tide (HAST) plus 3 vertical feet. There is also an amendment to the Shoreland Overlay Performance District that specifically talks about a tidal waters definition and references that there has to be a field determination of where the line is going to be.

Mr. Curry explained his proposed change to the definition. He wants the language changed to reflect that in the Shoreland Performance Overlay District they are not relying on physical features such as vegetation or soil types. He has proposed replacing such language with a determination of the boundary from a field engineering determination of the topographic line.

Ms. Quinn said she had not been troubled by the existing language, and is concerned that if the Town goes to a GIS system, the line may not need to be field verified.

Ms. O'Meara said we have GIS now but there is a wide variability in the quality of the data. If we were to improve the location of where we depict our Shoreland Zone line we would still need to rely on aerial photography, which is not as reliable as boots on the ground.

The Board then had a short discussion of the use of the word field engineer and whether or not it required a licensed surveyor.

Ms. Quinn then opened the public hearing and stated that comments would be limited to 3 minutes.

Sheila Mayberry of 30 Trundy Road said she has two questions. The first is why can't there be language that the CEO must reference the official map? Because that is what the Ordinance does require when there is an issue with respect to the boundaries. Any CEO must reference the Zoning Map.

The second question is, if the town is stating that the map is inaccurate, or not up to State standard, we must update it. It is inconceivable to her that the Town won't do that. Why won't the Town update the map at this critical time?

Maynard Murphy of 24 Pilot Point Road said Pete Slovinsky gave a talk on sea level rise last October. Mr. Murphy said Cape Elizabeth's current ordinance is more restrictive than HAST + 3. Using HAST + 3 may be problematic in the coming years because it is using data that are already 12-14 years old and it won't be updated until 2025. Also, the sea level is rising faster than predicted. He talked about the amount of rise of the sea level, and urged the Board to be prudent in their duties to the citizens of Cape Elizabeth.

Debra Murphy of 24 Pilot Point Road handed out some materials and projected that on the screen. She is addressing the accuracy of the current map. She talked about the scale of the map and the margin of error. She pointed out a place where the zone line goes down the middle of a 50ft. road. She pointed out that she has overlaid the paper map with a digitized map. You can see that the

existing current Shoreland Zone map lays over the digital map perfectly, therefore the map is accurate. She then talked about some specific parcels and how they would be eliminated from the zone if you adopt HAST + 3. In her neighborhood alone the total square footage that will be removed from the Shoreland Zone is 164,269 sq. ft., which is the size of 3 football fields.

Jim Morra of 5 Waumbek Road is concerned about Hast + 3 being less restrictive than what we have now. He talked about the wave action at high tide. 15 ft. waves are common in a storm. He showed a picture of debris thrown up over the top of the bank from a storm. When you take in to consideration the highest wave at high tide, you need to go with HAST + 6.

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

Mr. Steinberg said that HAST +3 comes from the scientific data as presented by Peter (Slovinsky). HAST is determined by the best experts in the field, so to say that their data is wrong is to be putting yourself above the best scientists.

Ms. Quinn said they got data from the last 100 years of storm tides. There has only been one approaching 14 ft. and that was the blizzard of 1978.

Mr. Steinberg said that somebody stated that we would lose a couple of football fields. He questions where the data come from. It is in direct contrast to the data we have seen. This measurement is as restrictive or more restrictive than the top of the bank.

Ms. Volent addressed Ms. Mayberry's question of why we will not be updating the map. The new definition says that the actual boundaries of this district shall be determined by the actual physical features present. She quoted the Ordinance as saying that field verification is needed. There is a lot of field verification, even if the matter is referred to the Planning Board. She is comfortable with proceeding with HAST + 3. She does not think we are doing less than we are now doing. This is not a drastic change.

Mr. Chalot said he wanted to make a comment about the map because so much has been said about it. One of the underlying assumptions about the Zoning Map is how it passes through various properties and along property lines. The

fact is that those are tax map lines, and the actual property lines shown on there are extremely inaccurate. They are not useful for locating anything. If you had a dispute with your neighbor about whether something was on your property or theirs, you would not use a Zoning map to determine that. You would need a surveyor.

Ms. Volent said she had gone to DEP Chapter 1000 to settle the issue of whether we need new maps. This is not a special amendment, we are trying to clarify the language, not change the setbacks and weaken our restrictions. We are just tightening the language.

Mr. Curry said the Shoreland Zoning District boundary is by its nature a somewhat wandering line. The present Zoning Map does not purport to track that wandering line. The map is not precise and field verification is needed.

Mr. Steinberg made the following motion:

BE IT ORDERED that based on the materials reviewed and the facts presented, the Planning Board recommends the Normal High Water Line Zoning Amendments to the Town Council for consideration.

Mr. Chalot asked if they needed to specify that they are approving the amendments proposed tonight. A consensus of the Board was unanimous to include those amendments, and Mr. Steinberg approved as well and then made the following motion:

BE IT ORDERED that based on the materials reviewed and the facts presented and the amendments as agreed, the Planning Board recommends the Normal High Water Line Zoning Amendments to the Town Council for consideration.

Ms. Jordan said she wished to explain her vote. She said the Board has heard from many people and had many discussions. She does not think this is perfect, but feels it is a movement in the right direction, so she will be voting yes.

Mr. Chalot seconded the motion and it was passed 6-0.

Ms. Quinn then opened the public comment on items not on the agenda.

Debra Murphy of 24 Pilot Point Road said that it would have been helpful to have a back and forth discussion with the board. She cited the last Planning Board workshop where there were three items and the public was not allowed to speak on the item she was interested in, but the public was allowed to have a back and forth discussion on the other items.

Sheila Mayberry of 30 Trundy Road said she proposes that a new Zoning Map be created.

Ms. Volent said she wants to be clear about the workshop, and the claim that she allowed the public to comment. We cannot take public comment at workshops, anyone who was speaking about the site plans was an applicant. Only applicants are allowed to speak at workshops.

Mr. Curry said he would like to consider changing the rules to allow a controlled dialogue.

Maynard Murphy of 24 Pilot Point Road would like to have a discussion offline.

Mr. Steinberg said he can assure everyone that their questions are considered and verified by experts. If this passes the Council there will be a definite point in the ground, with no questions.

Ms. Quinn wants to consider opening the topics for discussion with the public.

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

Respectfully submitted,

Hiroshi Dolliver  
Minutes Secretary