

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD

June 21, 2016

7:00 p.m. Town Hall

|          |                    |                   |
|----------|--------------------|-------------------|
| Present: | Peter Curry, Chair | Jonathan Sahrbeck |
|          | Josef Chalat       | Henry Steinberg   |
|          | Carol Anne Jordan  | Victoria Volent   |
|          | Elaine Falender    |                   |

Also present was Maureen O'Meara, Town Planner.

Mr. Curry opened the meeting and called for approval of the minutes of the May 17, 2016 meeting. The minutes were approved 6-0. The minutes of the executive session of June 7, 2016 were approved 6-0.

OLD BUSINESS

**517 Ocean House Rd LLC v. Town of Cape Elizabeth** - The Superior Court has remanded to the Planning Board for further findings the 541 Ocean House Rd Site Plan approval granted May 19, 2015, Sec. 19-9, Site Plan Review.

John Wall, Town Counsel, told the Board that the judge is requiring three areas that the Board review and make additional findings of fact. The Board can take up each issue one at a time or combine them if they feel they should be combined. The Board should make reference to the record materials that exist and include all submissions and oral testimony before the Board. The Board needs to focus on findings of fact that support the conclusions that they reached.

Attorney Wall then gave an example of an issue that is not before the Board to illustrate how to proceed.

Mr. Curry opened the public comment.

Peggy McGehee of Perkins Thompson spoke on behalf of 517 Ocean House Road LLC. She said it is unusual to have a remand, and there are 3 issues here. She has commended Ms. O'Meara for her valiant effort to secure a transcript of the meeting.

One important omission in the memo is that you are supposed to make a finding on safety. There is a new parking lot behind building 3 and the applicant says there is no lighting. You would have public parking behind a building where there are no lights. This is a safety issue. There should have been a site plan approval of all 4 buildings and not just 3.

The storm water calculation has no findings in regard to a 25 year storm.

The last issue is whether the parking lot is obscured from Route 77. There will be one tree every 75 feet. 517 Ocean House Road was required to put in a great deal of screening.

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

Mr. Curry suggests that the Board discuss each the 16 items in the finding of fact and then table this to the next meeting so we can gather the opinions into a cohesive statement for each.

Mr. Sahrbeck thinks we can get a consensus on each item tonight and not table it to next month.

Mr. Steinberg thinks we can go to the transcript of the meeting and cite the page number where the evidence shows what was considered.

Attorney Wall said the Board needs to make specific reference to the information they used to make their decision.

Ms Falender asked whether the Board could cite the memo prepared by Ms. O'Meara.

Attorney Wall said the Board needs to be the ones making the decision on the findings.

On Item 1.

Mr. Sahrbeck said the lighting was specifically addressed by himself and Ms. Volent at the hearing. The plan itself shows 6 different locations where lights exist. This was brought up at the site walk as well. The one issue that was new to us was the back parking lot with no lighting. From his recollection and looking at the plan, this back parking lot was not open to the public. This is a back lot to be used by the employees of the landscaping business. There are 2 gates on the plan that would limit the public's access to this area.

Mr. Chalot said determining adequate lighting for safety is really the job of a lighting engineer. This went to the engineer and there was no comment on the lighting, so to him this says there was enough lighting.

Mr. Steinberg said it was asked of the applicant if there was enough light and it was affirmed that there was sufficient light.

Ms. Falender said looking at the location of the fixtures on the plan, and specific questions in the hearing, she thinks the lighting was adequate. The engineer will point out where the standards are not being met, and he did not mention any problems in this area.

Ms. Jordan agrees with Mr. Sahrbeck's comments. As far as the parking by building #3, it's not for public parking. It is for storage or parking vehicles related to the landscape business.

Mr. Curry said the site walk made him aware of the safety of the site. It is flat and he could see that there was lighting for the hours of darkness.

Mr. Steinberg asked if they could now synthesize these opinions and come up with a yes or no vote on each issue.

Attorney Wall said that it is good to get all the facts on the record so that next week they can vote on the issues.

The Board had a discussion of whether to synthesize and vote on each issue as they go along or allow Mr. Curry and Ms. O'Meara to pull it together and come back with it at the next meeting. They decided to proceed and wait for the next meeting to have it in final form to vote on.

Item 2.

Mr. Sahrbeck said from the site walk and the plans he sees that there are buffers at the property lines. On the back there will be no lighting, and no public parking.

Mr. Chalot said that historically there have been no complaints on the existing lighting. The lights are adjustable and can be angled down.

Mr. Steinberg said there are trees and shrubs which blend with the area around.

Ms. Falender said there was some discussion of a photometric study and the board decided to waive that requirement.

Ms. Jordan said that on the site walk they looked carefully at the existing lighting and no new lighting was proposed. There had been no complaints.

Mr. Curry agreed.

Item 3.

Messrs. Sahrbeck, Chalat and Steinberg and Ms. Jordan all said item 3 was the same as in Item 2.

Ms. Falender referred to the summary prepared by Ms. O'Meara.

Item 4.

Mr. Sahrbeck said that from what they saw on the site walk and from the landscape plans he thinks the applicant did an adequate job.

Mr. Chalat said they are replacing asphalt with lawn.

Mr. Steinberg said this is a rural area and the applicant has a landscaping business for the plantings.

Ms. Falender agrees with what has been said.

Ms. Jordan said the fact that the front parking lot is being replaced by lawn goes a long way to improving the site. And there is enough of a buffer to soften the look of cars parked. She doesn't know of any parking lot in town where you can't see the cars parked.

Mr. Curry agrees and thinks the landscaping plan is robust. And it is a landscaping company who is the applicant.

Item 5.

Mr. Steinberg thinks this is more than adequate to blend in with the surrounding area.

Ms. Falender notes the esplanade and street trees along the front of the property. Adequate landscaping and buffering are there. The eye will focus on landscaping, not on the cars.

Mr. Sahrbeck, Mr. Chalat and Ms. Jordan referred to Item 4.

Item 6.

Mr. Sahrbeck referenced the Northeast Civil Solutions letter of April 30, 2015 page 4. There will be no change of drainage patterns. And they will get rid of a lot of asphalt and plant grass which will absorb water.

Mr. Chalat noted that the Town Engineer recommended it in his review.

Mr. Steinberg said they are reducing the impervious surface.

Ms. Falender said the Town Engineer supports waiving this requirement, even as he had suggestions about drainage within the property.

Ms. Jordan relied heavily on the Town Engineer.

Mr. Curry said it is a very flat property with no history of flooding and a reduced amount of impervious surface.

Item 7.

The Board agreed that their answers to Item 6 and the engineer's letter cover this item.

Item 8.

Mr. Sahrbeck said that they are taking away pavement and adding no buildings.

Ms. Falender noted that if you look at the Town Engineer's letter he was talking about culverts etc. He was thinking of downstream effects and didn't apparently need any further information than what was presented.

Ms. Jordan thinks the applicant's plan is going to be an improvement, so we do not need to look further than that.

Mr. Sahrbeck suggested that all the rest of the items have to do with stormwater and the answers are already here.

Item 9.

Reference to the previous points made.

Ms. Falender said there is detail on the plans that show the drainage and piping. It is not just the engineers, but also the plans on all these items.

Item 10.

Ms. Falender said on this item she would point to the additional front yard planting and reducing the paving.

Item 11. and Item 12.

There were no additional comments.

Item 13.

Mr. Sahrbeck said that on the site walk it was pointed out that they will redesign the drainage near the road.

Ms. Falender said the Town Engineer's letter addresses this point.

Item 14.

No additional comments

Item 15.

Ms. Falender said this will be achieved by increasing the pervious surfaces.

Item 16.

No additional comments.

Mr. Sahrbeck made a motion to table the 517 Ocean House Road item to the July Planning Board meeting.

Ms. Falender seconded and the motion was passed, 6-0.

Ms. Volent arrived.

**Wentworth Lodge Special Event Facility Site Plan** - The Sprague Corporation is requesting Site Plan Review of a proposed special event facility to be located at 10 Winters Lane (R8-1-2), Site Plan Public Hearing, Sec. 19-9.

John Greene, property manager for the Sprague Corporation, described the changes since the last meeting. There were several changes to the plans, notes and typos corrected. They have added a note 12 to include the type of events expected to be held. They reviewed the Fire Chief's comments regarding the fire lanes being maintained at 20 ft. during an event. We can add a note to that effect or the lanes are marked at 20 ft.

He handed out copies of a letter from BH2M regarding the normal high water line.

He explained that the 2 ft. contours on the map make it difficult to find the 9.6 elevation. It is difficult because the bank is basically a cliff in many places, so the contour lines fall one on top of each other.

Mr. Chalot asked about the 20 ft. fire lanes in the parking lot.

Mr. Greene said they are not fire lanes, but the lanes between the spaces are set at 20 ft. The Fire Chief has requested that the lanes remain open during an event.

Ms. Volent had questions about the high water line and the methods used to determine that line.

Mr. Curry noted that the plan is for a temporary tent, not a structure.

Ms. O'Meara said that you can have a temporary structure within the 75 ft. buffer. She replied to a question that the Code Officer's only concern was the ratio of porta-potties to attendees. He said 1 porta-potty for every 40 attendees was a better standard.

Ms. Falender wants a note on the plan that they are not approving any permanent structures. The set up and removal of the tent should happen with each event.

Ms. Jordan made the following motion:

#### Findings of Fact

1. The Sprague Corporation is requesting site plan review of a special event facility located at the Wentworth Lodge, 10 Winters Ln, which requires review for compliance with Sec. 19-9, Site Plan Regulations and Sec. 19-8-15, Special Event Facility Standards.
2. The plan for the development reflects the natural capabilities of the site to support development.
3. Access to the development will be on roads with adequate capacity to support the traffic generated by the development. Access into and within the site will be safe. Parking will be provided in accordance with Sec. 19-7-8, Off-Street Parking. The Planning Board finds that provision of 20' wide parking aisles is adequate based on the normal imprecision of attendant directed parking in an unlined hayfield as long as clear access for emergency vehicles is provided at all times.
4. The plan does provide for a system of pedestrian ways within the development.
5. The plan does provide for adequate collection and discharge of stormwater.
6. The development will not cause soil erosion, based on the erosion plan submitted.

7. The development will be provided with an adequate quantity and quality of potable water.
8. The development will provide for adequate sewage disposal.
9. The development will be provided with access to utilities.
10. The development will not locate, store or discharge materials harmful to surface or ground waters.
11. The development will provide for adequate disposal of solid wastes.
12. The development will not adversely affect the water quality or shoreline of any adjacent water body.
13. The applicant has demonstrated adequate technical and financial capability to complete the project.
14. The development will provide for adequate exterior lighting without excessive illumination.
15. The development will provide a vegetative buffer throughout and around the site and screening as needed.
16. The development will not substantially increase noise levels and cause human discomfort.
17. Storage of exterior materials on the site that may be visible to the public will be screened by fencing or landscaping.
18. The scope of the special events will not exceed the maximum limits for special event facilities.
19. The temporary nature of the parking and sanitary waste facilities is adequate to comply with Site Plan Standards.
20. No special event structures are proposed that are subject to building codes.
21. Additional restrictions have been imposed on the operation of the special event facility.
22. The application substantially complies with Sec. 19-9, Site Plan Regulations and Sec. 19-8-15, Special Event Facility Standards.



THEREFORE BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Sprague Corporation for site plan review of a special event facility located at the Wentworth Lodge, 10 Winters Ln be approved, subject to the following conditions:

1. The approval does not include or grant permission for hosting special events in the Wentworth Lodge building.
2. A note shall be added to the plan that existing vegetation located within the 30' side and front yard setback areas of lots 1-1, 1-2 and 1-3 that provide a buffer for the special event facility shall not be removed in order to preserve a vegetated buffer. The areas of vegetated buffers shall also be delineated on the plan with consideration that the special event facility is located on 3 lots and buffer areas should be identified at the boundaries of the facility.
3. That the plan be amended to require that a minimum of 1 portable toilet for every 40 attendees be provided at special facility events.
4. That a note be added to the plan that no permanent structures are proposed or included in this application. This approval assumes that tents to be installed for events are temporary and will need to be removed after events.
5. That no special events be hosted on the property until the plans are revised to satisfy the above conditions and submitted to the town planner.

Mr. Sahrbeck seconded the motion and it passed, 7-0.

Ms. Volent left the meeting.

#### NEW BUSINESS

**Cape Elizabeth High School Generator Site Plan Amendment** - The Town of Cape Elizabeth is requesting an amendment to the previously approved site plan for the school campus (U21-12) to construct a pad for a generator adjacent to the High School, Sec. 19-9, Site Plan Amendment Completeness, Public Hearing.

Greg Marles, Director of Facilities and Transportation, introduced the project. They want to install a concrete pad for a new generator to provide backup power for the high school.

He showed pictures of the area and where the new generator would be placed.

They will be removing two 100 gal. propane tanks next to the building and use the existing 1000 gal propane tank. It eliminates having two gas services into one building. It will be much safer. They will remove some shrubs and add some new plantings. They will remove one tree that is on top of the sewer line and near the manhole cover.

Mr. Sahrbeck asked how tall the transformer is, and how tall will the new generator be.

Mr. Marles said the transformer is about 5 ft. tall and the new generator will be about 7ft. tall with the pad. Mr. Marles said the existing generator is not large enough. It does not protect the asset, the school.

Mr. Sahrbeck asked about the decibel level of the proposed generator.

Mr. Marles said they are very far away from the closest property owner. The decibel level at the property line is 14.7 db. They are 292 meters from the property line. There is a football field and grandstand, part of a softball field and a parking lot in between.

Mr. Curry opened the public comment period on completeness. No one came forward, so the public comment period was closed.

Mr. Steinberg asked about the bollards at the propane tank. He said there is not one in front of it.

Mr. Marles said that has been there since 1968, and he has no plans to add another bollard.

Mr. Sahrbeck made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Town of Cape Elizabeth to amend the previously approved site plan to install a replacement generator at the High School located at 343 Ocean House Rd be deemed complete.

Ms. Jordan seconded the motion and it was approved, 6-0.

The Board does not want a site walk.

Mr. Curry opened the public hearing. No one came forward, so the public hearing was closed.

Ms. Jordan asked if they were going to add the plantings in front of the generator.

Mr. Marles said they were.

Mr. Sahrbeck asked why they had moved the proposed location of the generator from the original plan.

Mr. Marles said it was to move the concrete pad away from the sewer line.

Ms. Jordan made the following motion:

#### Findings of Fact

1. The Town of Cape Elizabeth is requesting an amendment to the previously approved site plan for the school campus to install a replacement generator at the High School located at 343 Ocean House Rd, which requires review under Sec. 19-9, Site Plan Regulations
2. The application substantially complies with Sec. 19-9, Site Plan Regulations.

THEREFORE BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Town of Cape Elizabeth to amend the previously approved site plan to install a replacement generator at the High School located at 343 Ocean House Rd be approved.

Mr. Sahrbeck seconded and the motion passed, 6-0.

**Old Mill Road 4-lot subdivision** - Mark Jordy is requesting Minor Subdivision Review of a 4-lot subdivision located on Old Mill Rd (R02-16), Sec. 16-2-3, Minor Subdivision Completeness.

Mr. Curry said he knows Mr. Jordy and believes that he can be impartial. The Board agreed that he did not need to recuse himself.

Mr. Jordy said he wants to take a parcel that has a single family residence and create two new lots for single family residences and a large area of common land. He talked about the beauty of the land and that he wants to preserve the natural setting, and therefore is asking for a road waiver.

John Mitchell of Mitchell and Associates then reviewed the existing conditions. It is a 24 acre parcel extending from Old Ocean House Road to the ocean. It is in the RA District and the Shoreland Zone District. There is a 250 ft. shoreland overlay buffer. Owen Haskell established the normal high water line based on the new Cape Elizabeth definition. They did this out in the field. It is also in the Resource Protection District. There are RP-1, RP-2 and RP-3 areas on the property. The property is about 600 ft. wide

by 2300 ft. long. It drains mostly in a southerly direction towards the brook, except for the easterly section of the property which has a drainage divide. (mapped by Al Frick)

Ms. Falender left the meeting.

Old Mill Road is a private road. The first portion of the road is paved-14 ft. wide- the balance of the road is gravel and varies in width from 10 to 12 ft. It has a Town approved dead end turn around at the end, and is 1540 ft. long. Mr. Mitchell outlined the existing utilities and said there is no existing sewer.

Mr. Mitchell said they had done a density calculation and came up with the result that 10 lots could be developed on this property. He showed the proposed plan and photos of the property. They are proposing 3 residential lots and common open space of 12.5 acres to be owned by the homeowners' association.

They propose to shorten Old Mill Road by 100 ft. They will widen it to 18 ft., a 14 ft. wide travel way and 2 ft. gravel shoulders from the paved section to the end. It will be part of the common land. They are asking for a waiver from 20 ft. Mr. Mitchell detailed the utilities and the stormwater management. They propose a rain garden in a low area.

Mr. Mitchell then reviewed the four waiver requests:

The road width- they want to reduce the width to 18 ft. as outlined above. He cited the Subdivision Ordinance, section 16-3-2, and read the standards which applied to his request.

Road Alignment- Because of ledge they would like to keep the road as is.

HHE-200 form- They would like to wait until the sale of the home sites before they do the final design. They have soil tests that show the soils are adequate.

Plan Scale- They want to use 1 in. = 80 ft. instead of 1 in. = 40 ft. in order to fit the plan on one 24X36 sheet.

Mr. Mitchell said they have the support of the Fire Chief to reduce the width of the road.

He responded to Ms. O'Meara's comments in her memo and addressed the Engineer's comments. He did not disagree with any of them.

Mr. Sahrbeck asked if there would be restrictions on Lot 4.

Mr. Mitchell said there will be restrictions.

Mr. Steinberg was concerned about cars trying to pass on the 14 ft. wide road.

Mr. Mitchell said they have provided a turnaround and 3 driveways that will widen the road.

Mr. Curry opened the public comment period. No one came to talk, so the comment period was closed.

Mr. Chalot made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Mark Jordy for the 4-lot Old Mill Rd Subdivision located at 41 Old Mill Rd be deemed complete. In accordance with Sec. 16-3-5 and based on the request submitted by the applicant, the Planning Board waives submission of the following information:

1. Completed HHE-200 forms.
2. Plans of a scale not to exceed 1"=40'

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

The Board did not need a second site walk.

Mr. Sahrbeck made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Mark Jordy for the 4-lot Old Mill Rd Subdivision located at 41 Old Mill Rd be tabled to the regular July 19, 2016 meeting of the Planning Board, at which time a public hearing will be held.

Ms. Jordan seconded and it was approved, 5-0.

The Board voted 5-0 to suspend the rules to take up a new item after 10 pm.

#### OTHER BUSINESS

**Technical Amendments** - The Town Council has authorized the Planning Board to assemble a package of Technical Amendments, which include amendments to the Subdivision, Conservation, Zoning and new Stormwater Ordinances, Sec. 16-3-6(c), Subdivision Ordinance Amendments, and Sec. 19-10-3, Zoning Ordinance Amendments, Public Hearing.

Ms. O'Meara said the Council has authorized the Planning Board to assemble a package of Technical Amendments. They are not generally major policy changes. The intent is to clean up provisions, clarify them and do updates. They are undertaken to protect the Town from unintended interpretations of our existing ordinances. They are to improve customer service by making our ordinances clearer when we apply them to real life situations.

The package includes amendments to the Subdivision Ordinance, the Zoning Ordinance, and the Conservation Ordinance. It pulls the two stormwater sections in the Conservation Ordinance and creates a brand new Ordinance called Stormwater.

Ms. O'Meara recognized the assistance they have received from Public Works Director Bob Malley, Stormwater Consultant Christie Rabasca, Tree Warden Mike Duddy, Town Engineer Steve Harding, Tom Errico Traffic Engineer, John Wall Town Attorney and Ben MacDougal Code Enforcement Officer.

Mr. Sahrbeck asked how many workshops had the Planning Board worked on these amendments.

Ms. O'Meara said they have had 11 meetings counting tonight; 9 of them were workshops. All were open to the public.

Mr. Curry opened the public hearing. There was no one in the audience, so the public hearing was closed.

Mr. Sahrbeck commended Ms. O'Meara and the other Town staff who went over all these amendments. This wasn't an easy task.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the supporting materials and draft ordinance amendments prepared and the facts presented, the Planning Board recommends the Technical Amendments to the Town Council for consideration.

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

The public comment period was opened and no one spoke so it was closed.

The Board voted 5-0 to adjourn at 10:10 pm.

Respectfully submitted,

Hiromi Dolliver

Minutes Secretary