

MINUTES OF THE PLANNING BOARD  
TOWN OF CAPE ELIZABETH

December 18, 2018

7:00 p.m. Town Hall

Present: Carol Anne Jordan, Chair      James Huebener  
          Josef Chalot                                Jonathan Sahrbeck  
          Peter Curry                                Victoria Volent  
          Andrew Gilbert

Also present was Maureen O'Meara, Town Planner.

CALL TO ORDER

Ms. Jordan called the meeting to order and asked for the approval of the minutes of November 20, 2018. They were approved as presented, 5-0 (2 abstain).

NEW BUSINESS

**Scott Dyer Rd Resource Protection Permit** - The Town of Cape Elizabeth is requesting a Resource Protection Permit to fill up to 1,200 sq. ft. of wetland on the north side of Scott Dyer Rd from Willow Brook to Spurwink Ave as part of the reconstruction of Scott Dyer Rd, Sec. 19-8-3, Resource Protection Permit Completeness and Public Hearing.

Bob Malley, Director of Public Works, said this is the second phase of the Scott Dyer Road reconstruction. This phase goes from Patricia Drive to Spurwink Road. They are requesting a Resource Protection Permit to fill up to 1,200 sq. ft. of wetlands.

Steve Harding, Town Engineer, said this is Phase 2 of the project. It covers Patricia Drive to Spurwink Road. It is the part of the road that is in poorer condition. There will be a sidewalk from Spurwink to Patricia Dr. He showed a plan of the section of the road. There are 2-11 ft. travel ways and 2-4 ft. paved shoulders. He said a lot of those sections will have curbs for sheet flow off the road onto the adjacent land. Some of the sections of the road will have a grass esplanade. He showed where there will be a small wetland impact at Willow Brook. He said they have met with the Whitakers and have an agreement about the removal and replacement of some trees on their land. He spoke about grading easements that they will need. There is a small pocket of wetlands of 996 sq. ft. they will impact. They will need easements, and DEP approval and Army Corps approval before they start work.

Ms. Jordan opened the public comment, and no one was there to comment, so the comment period was closed.

Mr. Curry asked about the slope work at Willow Brook on the south side of the road.

Mr. Harding showed the plan of that area and explained what they are going to do. He said they will get permanent easements from Cape Memory Care and the Whitakers.

Mr. Sahrbeck asked if there have been any objections from the public to the project.

Ms. O'Meara said there have been none.

Mr. Gilbert asked how long the temporary easement lasts. He is concerned that if the slopes are not stabilized when the easement ends, the homeowners would need to take care of it.

Mr. Harding assured him that the slopes will be stable and the homeowners will not need to worry about that.

Mr. Chalut asked if the waivers had been discussed in the workshop.

He was told that they had been discussed.

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 for a Resource Protection Permit to fill up to 1,200 sq. ft. of wetland as part of the reconstruction of Scott Dyer Rd be deemed complete. The Planning Board determination includes granting of the following waivers:

1. A high intensity soil survey, with the waiver supported by the submission of a wetlands report based on field determinations by Gary Fullerton, Maine Certified Soil Scientist.
2. Pre and post stormwater calculations, with the waiver supported by the submission of a stormwater management plan, including written materials and plans, prepared by Steve Harding, P.E.

Mr. Chalut seconded and the motion passed, 7-0.

Ms. Jordan opened the public hearing and no one came to speak, so the public hearing was closed.

Mr. Chalot asked about trees being removed, and are any being replanted.

Mr. Harding showed on the plan which trees will be removed. One of them will impair the sight distance. The Whitakers actually wanted a couple of trees to come down. They will protect a couple of catalpa trees on the Whitaker property.

Ms. Volent made the following motion:

#### Findings of Fact

1. The Town of Cape Elizabeth is requesting a Resource Protection Permit to fill up to 1,200 sq. ft. of wetland as part of the reconstruction of Scott Dyer Rd, which requires a Resource Protection Permit.
2. The proposed fill will not materially obstruct the flow of surface or subsurface waters across or from the alteration area;
3. The proposed fill will not impound surface waters or reduce the absorptive capacity of the alteration area so as to cause or increase the flooding of adjacent properties;
4. The proposed fill will not increase the flow of surface waters across, or the discharge of surface waters from, the alteration area so as to threaten injury to the alteration area or to upstream and/or downstream lands by flooding, draining, erosion, sedimentation or otherwise;
5. The proposed fill will not result in significant damage to spawning grounds or habitat for aquatic life, birds or other wildlife;
6. The proposed fill will not pose problems related to the support of structures;
7. The proposed fill will not be detrimental to aquifer recharge or the quantity or quality of groundwater;
8. The proposed fill will not disturb coastal dunes or contiguous back dune areas;
9. The proposed fill will maintain or improve ecological and aesthetic values;

10. The wetland fill is minimized so that the maximum amount of existing buffer area between the wetland and adjacent land uses is not disturbed;
11. The fill and road reconstruction project will be accomplished in conformance with the erosion prevention provisions of Environmental Quality Handbook Erosion and Sediment Control, published by the Maine Soil and Water Conservation Commission dated March, 1986, or subsequent revisions thereof;
12. The fill and road reconstruction project will be accomplished without discharging wastewater into Wastewater Treatment Facilities in violation of Section 15-1-4 of the Sewage Ordinance; and
13. A portion of the proposed fill will be placed in the floodplain and will require a Flood Hazard Development Permit from the Code Enforcement Officer in accordance with Section 6-6-6 of the Floodplain Management Ordinance.
14. The application substantially complies with Sec. 19-8-3, Resource Protection 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 for a Resource Protection Permit to fill up to 1,200 sq. ft. of wetland as part of the reconstruction of Scott Dyer Rd be approved, subject to the following conditions:

1. That the plans be revised to satisfy the comments of the Acting Town Engineer in his letter dated December 12, 2018;
2. That the applicant obtain easements for work outside the right-of-way;
3. That the applicant obtain necessary permits from the Maine Department of Environmental Protection, U.S. Army Corps of Engineers, and Town of Cape Elizabeth Code Enforcement Officer.
4. That there be no alteration of the wetland until the above conditions are satisfied.

Mr. Sahrbeck seconded the motion which was approved, 7-0.

Since this is Ms. Volent's last meeting, Ms. Jordan thanked her for her service.

Mr. Sahrbeck also thanked her.

Ms. O'Meara said Ms. Volent has made her a better planner, and she is grateful.

The Board voted, 7-0 to adjourn at 7:30.

Respectfully submitted,

Hiroimi Dolliver  
Minutes Secretary