

## AGENDA

TOWN OF CAPE ELIZABETH

PLANNING BOARD AGENDA

July 20, 2004 7:00 p.m. Town Hall

### CALL TO ORDER

7:00 Minutes of previous meeting: June 15, 2004

Correspondence:

- Woodlot Alternatives Wetlands Report re: Hamlin St Subdivision
- Letter from Town Manager re: Paper Streets
- Freedom of Access Law Update
- Shoreland Zoning News Summer 2004

### CONSENT AGENDA

1. Jordan Farm Stand Addition - The Jordan Family is requesting an addition to the back of the farm stand located at 21 Wells Rd to enclose an existing cooler and prep area, Sec. 19-9-6, Site Plan Amendments.

### OLD BUSINESS

7:10 Hamlin Street Subdivision - Cloutier Construction is requesting Subdivision Review of a reconfigured 9 lot subdivision to be located at the end of Hamlin Street, Sec. 16-2-5, Amendment to a Previously Approved Subdivision, Sec. 19-8-3, Resource Protection Permit.

### NEW BUSINESS

7:40 Autumn Tides Subdivision - Request by Wyley Enterprises, LLC for Minor Subdivision Review, a Resource Protection Permit and a Private Accessway Permit for Autumn Tides, a 5 lot subdivision located off Wells Rd (R5-33), Sec. 16-2-3, Minor Subdivision Application Completeness, Sec. 19-8-3, Resource Protection Permit Completeness, and Sec. 19-7-9, Private Accessway Permit Completeness.

8:00 Cape Elizabeth Family Medicine Addition - Dr. Craig Johnson would like to request Site Plan Review of a 1,400 sq. ft. addition to the existing medical building located at 1226 Shore Rd (U11-14), Sec. 19-9, Site Plan Completeness.

## OTHER BUSINESS

8:25 Open Space Zoning Amendment - The Town Council has referred to the Planning Board a request to amend the Zoning Ordinance to allow the phasing of Open Space Zoning Subdivisions with an amendment to Sec. 19-7-2 of the Zoning Ordinance, Sec. 19-10-3, Zoning Ordinance Amendments.

NOTE: The times on this agenda are approximate and are intended for the convenience of the applicants; however, your time could be called earlier or later than the indicated time.

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## DRAFT MINUTES

TOWN OF CAPE ELIZABETH

MINUTES OF THE PLANNING BOARD

JUNE 15, 2004 7:00P.M, TOWN HALL

John Ciraldo, Chair Peter Hatem

David Griffin David Sherman

Barbara Schenkel Jack Kennealy

Peter Cotter

Also present was Maureen O'Meara, Town Planner.

Mr. Ciraldo opened the meeting by asking for comments for the prior meeting's minutes. Hearing none, he asked for a motion.

Mr. Griffin made a motion to accept the minutes. Mr. Kennealy seconded the motion and passed 7 in favor, 0 opposed, 0 abstained.

Mr. Ciraldo welcomed Mr. Cotter back from an absence. He proceeded to review correspondence.

## CONSENT AGENDA

Plaisted Park Concession Stand - The Town of Cape Elizabeth is requesting an amendment to the previously approved Site Plan for Plaisted Park located on Shore Rd and Little John Rd to add a bathroom with water and sewer line connections, Sec. 19-9-6, Site Plan Amendments.

Mr. Ciraldo reminded the Board that if there were to be substantive discussion that the item would have to be removed from the Consent Agenda. He stated that there had been a letter received from an abutter with concerns.

The Board had discussion on whether or not to take the

application off the Consent Agenda.

Mrs. Schenkel made a motion to move this item to the regular Agenda. It passed 7-0.

Mr. Ciraldo stated there could be discussion and asked Mr. Bump if he had talked with any of the abutters.

Jeffrey Bump, 6 Woodcrest Road, stated that the intention all along was to install a bathroom and was disclosed during approval for the project. The plumbing had already been roughed in with that intention. The Little League was fortunate enough to receive a donation to be able to install it at this time. He stated that they are not adding on to the building and bathroom would be locked at all times with the exception of during little league games. This should not increase traffic, as the letter suggested, but decrease traffic because they will be getting rid of the portable toilets, which may draw use from Fort Williams patrons.

Mrs. Schenkel stated that you have to let people have their say, but she believed the plumbing is important, as there will be food and drink served at the concessions stand.

Mr. Bump agreed and stated that this would have been in the initial application had there been funding. Thanks to an anonymous benefactor they are able to install the bathroom.

Mr. Griffin stated that he agreed with Mrs. Schenkel and thought perhaps there should be a hearing if there are other issues.

Mr. Ciraldo asked the Board if they wanted to table this and have a Public Hearing.

Mr. Sherman said he knew the initial plan was quite clear with its intent to have toilet facilities. He also feels that perhaps the complainant is misunderstood, thinking that there would be an expansion of the approved building. He also believes the portable toilets are a public nuisance.

Mrs. Schenkel asked that Mr. Bump speak with the citizen to alleviate any concerns.

Mr. Ciraldo asked for a motion to table the item.

The motion failed 0 in favor, 7 opposed, 0 abstained.

Mr. Ciraldo asked for another motion.

Mr. Hatem made the following motion:

Motion for the Board to Consider

BE IT ORDERED that, based on the plans and materials previously submitted and the facts presented, the application of the Town of Cape Elizabeth to amend the Site Plan for the

Concession Stand at Plaisted Park, located at Shore Rd and Old Fort Rd, to add a bathroom and connect the building to public water and sewer be approved as a Consent Agenda item.

Mr. Sherman seconded the motion and passed 6 in favor, 0 opposed, 1 abstained(Kennealy).

## OLD BUSINESS

Hamlin Street Subdivision - Cloutier Construction is requesting Subdivision Review of a reconfigured 9-lot subdivision to be located at the end of Hamlin Street, Sec. 16-2-5, Amendment to a Previously Approved Subdivision Public Hearing, Sec. 19-8-3, Resource Protection Permit Public Hearing.

Steven Blais, Pinkham & Greer, described the combining of an old 22-lot subdivision to create a less dense, 9-lot subdivision to include a sidewalk with street trees and esplanade. He stated that the existing 18 ft wide gravel road would be brought up to town standards to become a public roadway. Power will be underground; drainage will be collected in catch basins. He stated they would be keeping an existing pond, adding a wall and a larger culvert that could manage the 25 yr storm. He stated they were working on new street names, to be approved by the Police Chief and the Town Assessor. The Town Engineer has also asked for an easement through lot one, which is already accounted for.

Mr. Ciraldo asked for questions from the Board.

Mrs. Schenkel asked for clarity on their definition to the RP1 wetland.

Mr. Blais stated that had not been submitted yet.

Mr. Ciraldo asked what had been done besides changing the wetland line.

Mr. Alan Burnell, Soil Scientist, stated that after the last meeting, Ms. O'Meara and the Conservation Commission had asked him to go back and look at the area between the RP1 and the pond. He had shown the two connecting, as there is an outlet from the pond that runs to the wetland.

Mr. Ciraldo asked other than changing his interpretation, what else did he do beside change the wetland delineation.

Mr. Burnell stated that he didn't do anything; he wasn't quite sure how to handle it. He also stated there was no association of the wetland with the stream.

Mr. Ciraldo stated that there should be more information to be able to determine if the wetland is connected.

Mr. Burnell agreed, and noted that this wetland has been mapped before. He has not looked at the prior mapping that is in the

Planner's Office.

Mr. Ciraldo asked Ms. O' Meara about the prior mapping information.

Ms. O' Meara stated the lot below the proposed project had previously come before the board. She stated the applicant attempted to create a development on that lot that would have access from Spurwink Ave. A RP1 wetland encompassed enough of the land parallel to Spurwink Ave so there wouldn't be enough room to create a road outside of the RP1 wetland and buffer, and the project failed. When the Cloutier application mapping came in it showed some of the same land as RP2, which is inconsistent. That didn't mean their mapping was inaccurate, however, it would need to be justified. In Cape Elizabeth, ponds are protected under the RP regulations. If this wetland connects to the pond, then it would kick enough extra acreage into the RP1 district that a 250 ft buffer would apply and the applicant would have to redesign the project.

Mr. Sherman stated that it was necessary for the applicant to provide more definitive mapping information before proceeding with the application.

Ms. O'Meara stated that she had spoken with the applicant prior to the meeting and they are amenable to tabling until after the Public Hearing.

Mr. Burnell stated he does have the supporting information for his mapping and would submit that.

Mr. Ciraldo asked if the applicant had seen the letter from Land Use Consultants.

Mr. Blais stated he had and responded to the three items.

1. He is working to get an easement across the first lot.
2. There will be significant fill to meet roadway standards.
3. The culvert will be checked to make sure of proper drainage.

Mr. Ciraldo opened the Public Hearing.

Russell Tornrose, 5 Hamlin Street, wanted to outline concerns of a letter he had previously sent. His primary concern was impact of lowering the culvert on the pond next to their home and the habitat that will affect. He has reviewed the revised plan with the barrier wall and how it interacts with pond. He is concerned about the ecosystem and preserving the wetland. He would like the mapping to be looked at seriously and discussed the different plant and wildlife that is supported by the land.

Holly Clark, 5 Hamlin Street, wanted to support the questions being asked by the Chair and the fact that the line was changed

so easily. She wanted to know if the Board could request an alternative judgment.

Joe Frustaci, 8 Rosewood Drive, stated that, under Star Homes, he owns 3 lots on the northeasterly side of proposed subdivision. He said he is in support of the project but it is creating a large expense to Star Homes by having 5 ft. of fill added to the roadway to meet standard. This in turn means having 8-9 ft of fill added to lots to be above roadway and is costly. The other issue is that he was never approached for an easement and he is not inclined to give an easement due to the amount of water to be discharged on that property. He asked that the Board makes sure there is relief for his lots and others downstream.

With no one else coming forward, Mr. Ciraldo closed the Public Hearing.

Mr. Sherman asked if the Board could order an independent survey to test the submitted wetland plans and if it were possible for abutter to do the same.

Ms. O'Meara stated you can have peer review at the expense of the applicant.

Mr. Ciraldo stated he is uncomfortable with the changes submitted by applicant and would like the Board's input for peer review.

The Board discussed peer review versus having independent soil survey.

Mr. Cotter dismissed himself at 7:55p.m.

Mr. Sherman and Mr. Hatem would like peer review on the entire study and independent study of wetland issues.

Mr. Ciraldo stated that this is a cost that the applicant should be responsible for.

Mr. Burnell offered to hire someone agreeable to the Board to do survey.

Mr. Ciraldo thanked him for the offer, but stated the Board would retain their own surveyor. He also asked Mr. Blais about the buffering of lots 4,5 & 6 with the RP2 wetlands.

Mr. Blais stated there would be an excellent natural buffer as they are only clearing a small portion of the lot and are agreeable to fencing with a small opening to designate the wetland.

Mrs. Schenkel asked for clarity concerning the culvert and proposed easement on Mr. Frustaci's lot and if there would be an opportunity to place it on the applicant's land.

Mr. Blais stated there would be a less desirable opportunity by

constructing a wall with a fence on top. The culvert needs to be located where it is due to draining. The proposed easement works well because it ties into the grade.

Mr. Sherman stated that there appears to be several issues that still need to be ironed out and perhaps it should still be tabled.

Mrs. Schenkel stated that the applicant should have a meeting with Mr. Frustaci to discuss the potential easement.

Mr. Sherman made the following motion for the Board to consider:

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Cloutier Construction for amendments to the previously approved Hamlin Street Subdivision and a Resource Protection Permit to reconfigure the road and lots into a 9-lot subdivision located at the end of Hamlin Street be tabled to the regular July 20, 2004 meeting of the Planning Board.

Mrs. Schenkel seconded and carried 6 in favor, 0 opposed, 0 abstained.

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## NEW BUSINESS

Fort Williams Park Cliff Walk South Extension - The Town of Cape Elizabeth is requesting Site Plan Review of the extension of the Cliff Walk in Fort Williams along the shore line south of Portland Headlight, Sec. 19-9, Site Plan completeness and Public Hearing.

Tom Emery, Land Use Consultants, gave a brief overview of proposed trail, which is a 6ft wide aggregate pathway extending along the fence line to the south overlook. They are proposing a wood fence along the ledge to prevent more erosion and for safety purposes due to the instability.

Mr. Ciraldo reminded the Board that the first issue is to determine completeness.

Mr. Sherman asked about signage.

Mr. Emery stated that they would replicate the north trail signage.

Mr. Hatem 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 Site Plan Review for the Cliff Walk South Extension, the construction of a trail along the shoreline of

Fort Williams Park south of Portland Head Light, be deemed complete, with the signage information added.

Mr. Griffin seconded the motion and carried 6 in favor, 0 opposed 0 abstained.

Mr. Ciraldo opened the Public Hearing. With no one coming forward, he closed the Public Hearing. Mr. Ciraldo opened discussion to the Board.

Mr. Griffin asked Mr. Emery if, in the area of the mounds, the berm would have vegetation on it to dissuade people from crossing it and causing further erosion.

Mr. Emery stated there is sumac covering the west side, and in addition to the fence, there would be rosa rugosa. They will also be taking extra fill from the trail excavation to fill in eroded areas.

Mr. Griffin stated his only concern is safety for park patrons.

Mr. Emery stated that they would be using snow fence to block off areas while fixing erosion. The decisions they made for trail location were based on safety.

Mr. Kennealy asked if this would impact access by visual artists.

Mr. Emery stated that fencing in that access area would not change.

Mr. Griffin made the following motion:

#### Findings of Fact

1. The Town of Cape Elizabeth is proposing to extend the Cliff Walk in Fort Williams Park along the shoreline south of Portland Head Light, which requires Site Plan Review under Sec. 19-9.
2. The plan includes plantings along the path.
3. 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 for Site Plan Review for the Cliff Walk South Extension, the construction of a trail along the shoreline of Fort Williams Park south of Portland Head Light, be approved, subject to the following condition:

1. That the total quantities for each proposed planting species be specified prior to bidding of the project.

Mr. Hatem seconded the motion and passed 6 in favor, 0 opposed.

## OTHER BUSINESS

Shore Acre Paper Street Vacation - The Town Council has referred to the Planning Board a request to review the paper streets located in the Shore Acres neighborhood north of Trundy Rd for possible vacation, Recommendation to Town Council.

Mr. Kennealy recused himself.

Mrs. Schenkel asked that the width of the easement be specified as 15ft to accommodate the Fire Department.

Ms. O'Meara stated they are negotiating a trade with Mr. Pinansky and the Board can ask for the easement to be 15ft wide. She is not positive there is room for an easement that wide.

Mr. Sherman stated he would support the 15ft easement request.

Mr. Ciraldo asked for a motion.

Mrs. Schenkel made the following motion:

BE IT ORDERED that, based on the maps and the information presented, the Planning Board recommends to the Town Council the following paper street vacations:

1. Overlook Lane, being that portion extending east from Katahdin Rd Extension to a point 15' from the extension of the easterly property line of Lot U12-42( Pinansky), with the following conditions:

a. That a deed restriction be placed on Lot U12-42 (Pinansky) that any access or utility extension from that lot, or lot(s) that originate from that lot be from Overlook Lane.

b. That rights of emergency access and pedestrian access for residents in the subdivision be conveyed to the Town of Cape Elizabeth over the minimum 15 ft traveled way located on Lot U12-37(Pinansky).

c. That easements be conveyed to any other utilities that currently have infrastructure in Overlook Lane.

2. Elizabeth Rd, being that portion located north of Trundy Rd.

3. Katahdin Rd Extension, being that portion extending from Trundy Rd to Highview Rd, with the following condition:

a. That the Town of Cape Elizabeth reserve to itself rights for a pedestrian easement over the full width of Katahdin Rd Extension to be used at a future date to create a 5' wide pedestrian pathway connecting Trundy Rd to Highview Rd.

b. That an easement for existing water lines located in Katahdin Rd be provided to the Portland Water District.

Mr. Griffin seconded the motion and carried 4 in favor, 1 opposed, 1 abstained.

Open Space Zoning Amendment- The Town Council has referred to the Planning Board a request to amend the Zoning Ordinance to allow the phasing of Open Space Zoning Subdivisions with an amendment to Sec. 19-7-2 of the Zoning Ordinance, Sec. 19-10-3, Zoning Ordinance Amendments.

Mr. Ciraldo reminded the Board that this is an effort to save time and expense for applicants who are only developing a portion of a parcel.

Mrs. Schenkel wanted to compliment staff on formulating this memo.

Mr. Sherman made the following motion:

BE IT ORDERED that, based on the information submitted and the facts presented, the Open Space Zoning Amendment (Sec. 19-7-2 (B))to allow phasing of developments with submission of a concept plan be tabled to the regular July 20, 2004 meeting of the Planning Board, at which time a public hearing shall be held.

Mrs. Schenkel seconded the motion and carried 6 in favor, 0 opposed.

Mr. Ciraldo asked for a motion to adjourn.

Mrs. Schenkel made a motion to adjourn.

Mr. Hatem seconded and carried 6 in favor, 0 opposed.

Meeting adjourned at 8:45p.m.

Respectfully Submitted,

Laura Palanza

Respectfully Submitted,

Laurie Palanza

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