

MEMORANDUM

TO: Cape Elizabeth Planning Board
FROM: Maureen O'Meara, Town Planner
DATE: June 4, 2013
SUBJECT: Normal High Water Line Shoreland Zoning Amendments

Introduction

The Town Council has referred to the Planning Board a request to amend the Shoreland Zoning definitions used for the Normal High Water Line of Coastal Water and the Coastal Wetland definition. The Planning Board discussed this with Code Enforcement Officer Ben McDougal at the May workshop.

Draft Amendment

At the last workshop, the Planning Board asked for the coastal wetland definition to specifically reference the Portland Head Light high tide level, which is the standard in this region.

Proposed Amendments

Coastal wetland: all tidal and subtidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes. All areas below the maximum spring tide level of the Portland Head Light predicted published high tide level are coastal wetlands. These areas may consist of rocky ledges, sand and cobble beaches, mud flats, etc., in addition to salt marshes and salt meadows.

~~**Normal High Water Line of Coastal Waters:** That line on the shore of tidal waters which is the apparent extreme limit of the effect of the tides, i.e. the top of the bank, cliff or beach above high tide.~~

Normal High Water Line of Inland Waters: That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond. Adjacent to tidal waters, setbacks are measured from the upland edge of the coastal wetland, defined herein. ~~on the shores and banks of non-tidal waters which marks normal high water, and which is apparent because~~

~~of the contiguous different character of the soil or the vegetation due to the prolonged action of the water. Relative to vegetation, it is that line where the vegetation changes from predominantly terrestrial to predominantly aquatic vegetation. (By way of illustration, aquatic vegetation includes but is not limited to the following plants and plant groups—water lily, pond lily, pickerelweed, cattail, wild rice, sedges, rushes and marsh grasses, and terrestrial vegetation includes but is not limited to the following plants and plant groups—upland grasses, aster, lady slipper, wintergreen, partridge berry, sarsaparilla, pines, cedars, oaks, ashes, alders, elms, and maples). In places where the shore or bank is of such character that the normal high water line cannot be easily determined (rockslides, ledges, rapidly eroding or slumping banks) the normal high water line shall be estimated from places where it can be determined by the above method. Areas contiguous with rivers and great ponds that support non forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or Great pond during the period of normal high water are considered part of the river or Great pond. (Effective October 15, 2009)~~

Next Steps

The Planning Board should review the proposed amendment. If it is satisfactory, the amendment should be placed on a regular Planning Board agenda so that a public hearing may be scheduled.