

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD **DRAFT**

August 18, 2015

7:00 p.m. Town Hall

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

Also present was Maureen O'Meara, Town Planner.

Mr. Curry opened the meeting and called for the approval of the minutes of July 21, 2015. Ms. Falender had an amendment. The minutes were approved as amended, 5-2 (abstain).

NEW BUSINESS

**Berry Subdivision and Broad Cove Subdivision Amendments** - William S. Holt is requesting amendments to the previously approved Berry Subdivision, located on Two Lights and Hannaford Cove Roads, and the Broad Cove Subdivision, located on Running Tide Road, to amend lot lines to merge abutting land, Sec. 16-2-5, Amendments to Previously Approved Subdivisions Completeness.

Ms. O'Meara said the Berry Subdivision is a 4 lot subdivision that was approved by the Planning Board. It has frontage on Two Lights Road and frontage on Hannaford Cove Road. An abutter has purchased Lot 4 and wants to delete the lot line between lot 4 and his abutting land. The other part of this application is to merge an abutting parcel into a lot in the Broad Cove Subdivision.

Bill Holt, (William S.) said he bought a 27 acre parcel in 1987 from the Maxwell family. On a handshake, he promised that he would not develop the land. He now wants to sell the ocean front home with 10 acres. He will sell 4 acres to the Wassermans, an abutter and retain 14 acres abutting lot 4 of the Berry Subdivision. He intends to build his residence on Lot 4 and grow grapes on the rest of the land. He has not developed the land in the 28 years he has owned it, and will not develop it in the future. He said his heirs have no intent to develop either. He wants to eliminate the setback from the lot line so he can build his house further back on the upland.

John Mitchell of Mitchell and Associates showed maps. The Holt property runs 1600 feet back from Maxwell cove. The property is approximately 27 acres. Lot 4 of the Berry Subdivision is about 3 acres. The proposal is to create an estate lot of 10.5 acres, with the driveway off Running Tide Road. The parcel to be conveyed to the

Wassermans is about 4.3 acres and abuts their lot in Broad Cove. The remainder of the land abuts Lot 4 of the Berry Subdivision. They plan to amend the Berry subdivision by removing the lot line between lot 4 and the remainder of the Holt property. Dr. Holt plans to build his home right up next to what is currently the lot line of Lot 4. He showed maps and photos of the property and proposed subdivision amendments.

Mr. Chalot asked if the original 27 acres was part of a subdivision.

Mr. Mitchell said it is not. The subdivision changes are to the Broad Cove Subdivision for the addition to the Wasserman lot and to add land to the Berry Subdivision.

Ms. Falender asked if they are removing lot 4 from the Berry Subdivision or adding to it.

Mr. Mitchell replied that they are removing it from the Berry Subdivision and transferring it to the Holt property.

Charlie Katz-Leavy, representing Dr. Holt, said he believes the proposal is to take lot 4 out of the Berry Subdivision.

Mr. Sahrbeck clarified that lot 4 is a buildable lot as it stands.

Mr. Chalot asked what is the advantage of taking the lot out of the subdivision.

Dr. Holt said he did not see any reason why you couldn't add the 14 acres to the subdivision or do it the other way around. He does not care either way.

Mr. Katz-Leavy said he would recommend removing it from the subdivision.

Ms. Volent asked why to leave the subdivision, and then she quoted two notes on the subdivision plan, Notes 8 and 11.

Mr. Mitchell replied that those notes can be added to their plan.

Mr. Curry opened the public comment on completeness.

Florence Braff of 69 Hannaford Cove Road said she abuts Dr. Holt. She has questions about covenants going with the land, namely beach rights. If lot 4 is merged what effect will this have on the beach rights.

Tom Egan of Stuart, Florida is a summer resident of the Hannaford Cove area. He had submitted a 3 page comment today, and passed out a copy to members of the Board.

He said he has submitted 5 reasons why the application is not complete. Among his reasons, the division of the Holt property is not complete because he has not submitted any legal commitment to sell to the Wassermans or a commitment to sell the 10 acre parcel.

The removal of restrictions, regulation and siting at lot 4 is without cause and justification. He can place his house where he wants without removing lot 4 from the subdivision.

The application does not address the private accessway provisions of the ordinance. If he sites his house off of lot 4, he has not yet merged his property.

The covenant in the deed to lot 4 runs with the land.

Mr. Curry closed the public comment because no one else came forward to speak.

Ms. Falender has a concern that we are taking a 27 acre lot with two points of access, Running Tide Road and Jordan Farm Road, and transferring a significant portion of that land to access on Hannaford Cove Road. The applicant has not supplied any traffic information. She believes traffic does apply. She understands that Dr. Holt does not intend to develop his land, but as a Planning Board, they need to be concerned about what might happen in the future. She does not think this application is complete without a traffic assessment.

Mr. Chalot said he would agree with Ms. Falender except if the application is to become part of the Berry Subdivision, then it is not changing the traffic at all.

Ms. Volent noted that there are wetlands that would prevent much development on the lots to be split off the 27 acre parcel. She also noted that the application is not to build an accessway to the back lot for purposes of subdividing it. If that happens in the future it would have to come before the Planning Board at that time.

There was a lengthy discussion about the access points and possible future development and assessment of the potential traffic if that land was to be subdivided.

Ms. Jordan said we have not done this sort of examination in the past. How can you assess what someone might want to do in 30 years.

Mr. Curry said how can you assess? There is nothing to assess. There is a minor change to change a lot line. We are way ahead of ourselves.

Mr. Sahrbeck said Dr. Holt owns lot 4 and can build on it. He wishes to merge that lot with other land he owns and build one house. He does not see a need for a traffic study.

Ms. Falender said she wants to make her point clear. At present we have a 3.04 acre lot with access to Hannaford Cove Road, we have a 27 acre lot that has access through the Broad Cove Subdivision. We are changing the Broad Cove Subdivision and the Hannaford Cove Subdivision in a way that impacts the traffic potential for those two subdivisions. Dr. Holt could move that lot line back 50 ft. and put a conservation easement on the rest of the land if that was his intent.

Mr. Katz-Leavy said there is an agreement with the Wassermans. He also said that if the two lots are in common ownership, we do not need to be here tonight. Anyone who wants to subdivide the land in the future, has to come back to the Planning Board. Removing the lot line does not create an opportunity to develop the land that does not currently exist. That potential is still there.

Dr. Holt added that there is no access to his land from Jordan Farm Road. The only access is off Running Tide Road. There is only one party who has the right to use the tote road. You cannot add any new lot off the end of Running Tide Road. It is a dead end road.

Mr. Chalot would like to see lot 4 as remaining part of the Berry Subdivision.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of William S. Holt for amendments to the Berry Subdivision, located on Hannaford Cove Rd, and the Broad Cove Subdivision, located on Running Tide Rd, to amend lot lines be deemed complete.

Mr. Chalot seconded the motion and it was passed 5-1 and 1 abstain.

Ms. Falender asked if Dr. Holt would be willing to move the lot line back and not merge the two lots.

Ms. Volent asked if they were willing to merge the lots and grant a conservation easement on the large parcel.

Mr. Sahrbeck said he thinks that if we are worried about development it would make it easier to accomplish if we keep the lots separate. He wants to keep this as one lot and focus on what is in front of us.

Mr. Curry opened the public hearing.

Eileen Kalikow of 53 Hannaford Cove Road said she hopes the Board is thinking of public policy, not just responding to what is in front of you. She is disturbed that no one is talking about the cottage that is on the Holt property. The Wasserman property has not been purchased.

Patty Morris of 26 Hannaford Cove Road said she has the same concerns as Ms. Kalikow. She wants other ideas, for instance just move the line. We need to see if other solutions could meet the same objectives.

Susan Latorre wonders how you can make a decision when there has been no sale of Dr. Holt's land that he doesn't want to keep. Hannaford Cove Road is a dangerous road.

Thomas Egan said there were 23 criteria in the original Berry Subdivision. You gave the original plan a lot of attention for 9 acres and 4 lots. Now you are moving fast, too fast, to go from 4 lots and 29 acres to 4 lots and 14 acres. The criteria you applied in the original plan should be applied here too. The covenants in the deed to Dr. Holt run with the land and must be adhered to. Until Dr. Holt responds to the other 3 lot owners, that is a covenant running with the land. This application is not complete, and is premature.

Jennifer Bailey of 30 Hannaford Road asks if the lot 4 is going to stay in the subdivision. She supports that the lot remain in the subdivision and subject to the covenants. What happens in the future is important to all of us.

Sherry Flaherty of 9 Running Tide Road is concerned that the Wasserman parcel has not been completed. She likes living down at the end of the Road. She does not want a road running through there.

Shirley Maxwell said her mother chose well in shaking hands with Dr. Holt. Everyone wants to have open space, and that is what Dr. Holt wants.

Tana Leonhart of 48 Hannaford Cove Road wants to know what happens next. How will she and her neighbors know what will be happening. She is concerned about the traffic on Hannaford Cove Road. She wants only one house.

Since no one else came to speak, the public comment period was closed.

Mr. Katz-Leavy said he is not sure why the public is more concerned by a 15 acre lot than a 3 acre lot and a 12 acre lot. The development potential is the same.

Ms. O'Meara said there has been a lot of concern about why the lots have not been sold before bringing this project forward. They can't be sold first. The applicant has to show right title and interest in the land. They could not have included the Wasserman parcel without the permission of the Wassermans. She cited a letter from the Wassermans to permit the land to be included in the plan.

Lot 4 has a building envelope. Since Dr. Holt owns the adjoining land, he wants to merge the two and replace that building envelope.

Mr. Chalat asked if the Wassermans wanted to put in an access road and put in a house back there, would they need to come to the Planning Board.

Ms. O'Meara said the Wassermans want to maintain their options, and as the ordinance is now, that would require a return to the Planning Board for a private accessway permit.

Ms. Falender asked if a corridor could be retained from the "vineyard parcel" to the access point on Running Tide Road.

Dr. Holt said there is only one person who has the right to access to the tote road, and that is the Duffetts.

Mr. Katz-Leavy said the tote road and its rights are outside the scope of tonight's application. They would like to have this done tonight.

Dr. Holt said he owns 30 acres and could sell off the oceanfront lot and retain the rest and give himself an easement from Hannaford Cove Road. He is splitting it into 3 parcels and intentionally cutting off access to Running Tide Road. He doesn't want more traffic.

After further discussion, the Board agreed that they want a site walk. It was scheduled for Wednesday August 26, 2015 at 7:30 a.m. at Hannaford Cove Road.

Ms. Volent wants further mapping of the wetland boundaries.

Ms. Falender and Ms. Jordan agree.

Ms. Falender wants the building envelope to be made smaller to accommodate one house.

There was further discussion about the siting of the building envelope.

Mr. Curry made the following motion:

That the further consideration of this application be tabled to the September 15, 2105 meeting of the Planning Board.

Ms. Falender seconded the motion and it was passed, 6-1.

**Robinson Woods II Resource Protection Permit 2015** - The Cape Elizabeth Land Trust is requesting a Resource Protection Permit to install 250' of boardwalk in RP1 Buffer and RP2 wetlands and 60' of fencing adjacent to 2 vernal pools in Robinson Woods, located on Shore Rd, Sec. 19-8-3, Resource Protection Permit Completeness and Public Hearing.

Chris Franklin, Executive Director of the Cape Elizabeth Land Trust, said they want to improve the existing trail. It has some soft spots where they want to use some bog bridging. He said they have signage there. They want to install fencing at the vernal pools to keep people and dogs out of them. He showed maps and slides of the areas. These are projects to preserve and protect the resource. They want to minimize the impact on the land. He spoke about the construction of the boardwalks and fencing. They will have ramps on either end of the boardwalks.

Mr. Steinberg asked if they will use plain lumber, or will they treat it.

Mr. Franklin said they use the new generation pressure treated lumber.

Ms. Volent asked if they will have ramps on either end and if they will need even more extra lumber in this permit.

Mr. Franklin said they will have ramps where the boards are not flush with the ground.

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

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 Cape Elizabeth Land Trust for a Resource Protection Permit to install 250' of 30" boardwalk and 60' of vernal pool fencing in RP1 and RP2 wetlands in Robinson Woods located on Shore Rd, be deemed complete.

Ms. Volent seconded the motion and it was approved, 7-0.

Ms. Volent asked if there were signs on the fence.

Mr. Franklin said there are signs there.

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

The board did not want a site walk.

Mr. Chalot made the following motion:

#### Findings of Fact

1. The Cape Elizabeth Land Trust is requesting a Resource Protection Permit to install 250' of 30" wide boardwalk and 60' of vernal pool fencing in RP1 and RP2 wetlands in Robinson Woods on Shore Rd, which requires review under Sec. 19-8-3, Resource Protection Regulations.
2. The Conservation Commission recommends that ramps be included on each end of the boardwalks.
3. Based on materials from a prior Resource Protection Permit application, the boardwalks appear to be installed in the 100 year floodplain.
4. 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 Cape Elizabeth Land Trust for a Resource Protection Permit to install 250' of 30" wide boardwalk and 60' of vernal pool fencing in RP1 and RP2 wetlands in Robinson Woods on Shore Rd be approved, subject to the following conditions:

1. That the boardwalks be constructed with a ramp on each end;
2. That the applicant obtain a floodplain permit from the Code Enforcement Officer; and
3. That there be no alteration of the site until the above conditions are satisfied.

Ms. Jordan seconded.



Ms. Jordan then asked about the need to construct ramps at each end of the boardwalks. She noted that Mr. Franklin had said they would only put them where the boardwalk was not flush with the ground.

Ms. O'Meara said they have not specified what the ramp should be constructed of, so it can be dirt.

The motion carried, 7-0.

The Board voted unanimously to adjourn at 9:20 p.m.

Respectfully submitted,

Hiromi Dolliver  
Minutes Secretary