

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

February 27, 2017

7:00 p.m. Town Hall

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

Also present was Maureen O'Meara, Town Planner.

Ms. Jordan called the meeting to order and asked for approval of the minutes of the January 17, 2017 meeting. The minutes were approved 7-0.

OLD BUSINESS

**Maxwell Woods Subdivision-** Joel FitzPatrick, d/b/a Maxwell Woods LLC, is requesting Major Subdivision Review and a Resource Protection Permit for Maxwell Woods, a 38-unit condominium and 8 apartment unit development located 112-114 Spurwink Ave, Sec. 16-2-4, Major Subdivision Review Public Hearing and Sec. 19-8-3, Resource Protection Permit Public Hearing.

Owens McCullough of Sebago Technics presented the project. He said they are planning 38 condos and 8 multiplex units (2 buildings with 4 units in each). The condos will be single or duplex units. All will be one story and are designed for 55 and older people. They are not planning to restrict to that age group, but the units are designed with that demographic in mind. They can have a deck, patio, sunroom or den added. Each will have a 2 car garage. As for the 2 multiplex units, the stairway will no longer be in the front, but enclosed and in the back.

Mr. McCullough showed elevations of the multiplex, front and back. He also showed the plat of the open space and the agricultural land. He pointed out that there is at least 100 ft. between a unit in this project and Canterbury Woods. There is 580 ft. to Hamlin Street.

The traffic study is not ready yet. The utilities, public sewer, water and utilities are underground. There will be no street lights, but each condo unit will have a small light at the street. The Maine DEP is reviewing the project under the Site Location of Development act.

The stormwater will be underdrain soil filters and focal points which are chambered systems. They are part of the Trout Brook Watershed, and will pay a fee to the town for this.

Ms. Jordan opened the public hearing.

Paul Seidman of 21 Oakview Drive asked if the traffic study would impact the Aucucisco School.

David Cummings of 99 Spurwink Avenue is concerned about the traffic sight lines and visibility. The speed limit is posted at 30 miles an hour, but not many people drive 30 mph. Most people drive closer to 50. There is also snow to consider. He is concerned about the distance it will take to stop for the intersection of Aster Lane. He cited the distances it would take to stop at each speed. The school busses and snow plows go faster than 30 mph.

Andrew Gilbert of 32 Aster Lane said he is not opposed to the project. He is concerned that there is not enough buffer with Cottage Brook. He thinks it is not well thought out. He would like them to leave the native trees as much as possible. He is also concerned about the animals and that they will have no reasonable way to travel the area.

Becky Fernald of Mitchell Road is concerned about the open space. She wants to know if it is at the 45% requirement now. She wants to be sure the open space meets the Zoning Ordinance. She said the Ordinance requires that they leave trees of more than 10in. across. There are pine trees there of more than 10 in. across. She does not think this project is in keeping with the Comprehensive Plan either. The open space that has been designated is not the most desirable. She believes there are vernal pools on the property and a vernal pool assessment will need to be done.

Emily Helliesen of 11 Hamlin Street said she has been reading through the 2013 Greenbelt Plan. She quoted from the plan. When looking at the proposed project, it doesn't seem to jibe very well. This open space is not compatible with the Greenbelt Plan. It will be cutting down a really large old growth forest. There will be condos on both sides and a trail in between. She would like them to preserve more of those trees. The wildlife will have nowhere to go when the apartments are built. The Cottage Brook trails have not been put in yet.

Margaret Gill of 7 Canterbury Way said it is alarming what they are proposing to build there. She moved from Portland to Cape Elizabeth, "the country" at that time. The country has been disappearing. First the horses went to Durham. She sees items in the paper all the time about a parcel behind the sign that says Welcome to Cape Elizabeth. Those trees on that 1/4 acre are the subject of controversy. What about these 18 acres? We are taking down the trees and putting up houses like mushrooms. Where is the country?

No one else came to speak, so the public hearing was closed

Mr. Steinberg asked why the parking for the apartments was opposite the entrances.

Mr. McCullough said the parking and the entrances are in the back. There are also entrances in the front with sidewalks. He also said the apartments are not being developed for the 55 + population.

Ms. Volent had some questions about the trails.

Mr. McCullough responded that the trails will be defined and will be put in after the infrastructure is all in.

Mr. Sahrbeck is concerned about the lack of adequate buffer between Cottage Brook and Maxwell Woods. They are all the same looking condos and until the trees which will be planted begin to grow, there will be no buffer left. He feels they need to have more room between Cottage Brook and this project. He'd like them to maintain the natural buffer that is already there.

Mr. McCullough said since Joel is developing both projects, he sees the two as integrated into a community.

Mr. Sahrbeck is still concerned that there needs to be a priority on having a buffer. If there is no growth there, it will feel like you are walking in the back yards of people.

Mr. Chalat asked about the sight distance.

Mr. McCullough said they will need to remove ledge and cut trees to achieve an adequate sight distance. They will comply with the Ordinance.

Mr. Curry looked at the slope on the property at the end of the Aster Road extension. He was concerned that they will take out the trees in that area.

Mr. McCullough said they would be putting 5 ft. of fill on the trees so the trees would die anyway. They will be preserving trees on the other side of the road.

Mr. Huebener was informed that the Board has a say in the architectural design of the multiplex buildings. He does not like the proposed plan with a barn look. He also doesn't like the target of over 55. He thinks that is a negative. He said we need more affordable housing for people with kids.

There was a discussion of how these projects get built.

Ms. Volent said she too thinks the apartment building design doesn't meet the standards.

There was a discussion of how this project was designed. The sense of the Board is that the applicant should consider putting in a few less units to create a better buffer with Cottage Brook.

Ms. O'Meara told the audience that since they have held the public hearing tonight, there will be no more notices sent to abutters at this stage of the process, but public comment will be allowed at the meeting. She told people how to follow the progress of this project.

Mr. Curry made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Maxwell Woods LLC for Major Subdivision Review and a Resource Protection permit for Maxwell Woods, a 38 unit condominium and 8 unit apartment development located at 112-114 Spurwink Ave, be tabled to the regular March 21, 2017 meeting of the Planning Board.

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

#### NEW BUSINESS

**Holt Private Road Review** - Dr. William Holt is requesting a private road review (to upgrade his existing driveway) to provide frontage for a new lot to be created at the end of Running Tide Rd (U14-40), Sec. 19-7-9 Completeness.

Bob Metcalf of Mitchell and Associates spoke on behalf of Dr. Holt. He said that attorney Bill Dale from Jensen Baird was also there. He showed a map of the existing conditions. He showed that there are RP-1 wetlands and RP-2 wetlands on the property. There are open fields, a wooded area and the map also showed the 250 ft. wetland setback. The Tote Road allows vehicular traffic only to the Duffett property, but there is pedestrian access over that road to the beach as well.

The proposal is for a private road to serve a new lot that they wish to carve out of the remaining 10.5 acre parcel. They also want a review of the extension of the sewer. There is a 50 ft. right of way coming into the property. They have asked for waivers of the design of the private road. The existing driveway is 345 ft. long. They are asking for a private road 300ft. long. The culverts would have to be expanded, and ledge removed, so they are proposing a 14ft. wide roadway with 2 ft. of grass on both sides. The Fire Chief said if they put a fire hydrant in, he would be ok with the narrower road. There is a water main there, so they can put in a hydrant. The turnaround is to the specs for the fire engines.

They are asking for a waiver of the requirement to have the centerline of the road be in the centerline of the right of way. The existing driveway is not in the centerline because of grading and ledge issues. They are trying to minimize the environmental impact.

He showed a map of the building area for the new lot. Taking into account the 250 ft. setback from the wetlands and the setback from the road, there is a building area of about 11,000 sq. ft., the majority of which is on higher ground. He also spoke about the drainage pattern from the parcel.

Mr. Metcalf then addressed Mr. Harding's letter. He feels they have completed the issues raised in that letter. He did say they want a waiver from the stormwater report because the impervious surface to be added is only about 1,200 sq. ft. and the drainage will be conveyed to where it currently goes.

The DEP has said they do not need a permit.

Mr. Metcalf said the only ones who have vehicular access over the tote road are the Duffetts. Any pedestrian access that has been granted will not be changed.

Ms. Jordan asked about a negative easement.

Bill Dale, a lawyer representing Dr. Holt, described the negative easement as a view easement. It has been respected and they do not think they are encroaching on that easement.

Mr. Chalot referenced an email from Chief Gleeson dated February 15. The Chief said he would like to have access to the cottage (Duffett) that meets the private accessway standard. Mr. Chalot wondered if that means you need to delineate a right of way.

Mr. Metcalf said that Dr. Holt has the right of first refusal on that (Duffett) parcel. If Dr. Holt sells his land, the right of first refusal would go with the sale. The Duffett parcel has a right of way over the field that was granted in 1927.

There was a discussion of the possible scenarios of what could happen about that right of way depending upon who owns it in the future. The legal status of the tote road will not be changed by this project, but there are legitimate public safety issues if the Duffett lot is redeveloped and does not have adequate public safety access.

Mr. Sahrbeck asked about the drainage to the Bagin property. He said the applicant has said nothing would drain in that direction from the new lot. How have they arrived at that conclusion?

Mr. Metcalf said it is based on the topography of the land. He then showed the plan and how it would flow.

Ms. Jordan then opened the public comment on completeness.

Thomas McNaboe represents Robert Flaherty, who is one of the abutters. He would like to see a more detailed survey of the metes and bounds, particularly with respect to the private road. The right of way that runs to the Holt property was a part of the plan in 1970 of the Jordan Lot. The easement is described as a connecting street. It is not a driveway. He would like to see a site walk.

Nancy Bagin of 7 Running Tide Road said she and her husband have submitted a letter and pictures. She said she doesn't see any consideration for the impact on the neighbors. She asked if there is any guarantee that when her yard fills up with water, that she is left to put in another drain. Is anyone accountable when that happens? The building is much higher, it is a grading issue. She is also concerned about her right of way to the beach. She feels she will be traipsing through someone's yard, playground etc.

Trish Wasserman of 3 Running Tide Road asked if there will be revised maps that show the current distribution of lots along Running Tide Road and Masefield. She cannot find a map that shows what lots there are in this neighborhood. She said a new lot was just carved out.

Ms. O'Meara told her that it is an existing subdivision and no one can create a new lot without coming to the Planning Board. There are owners who own multiple lots in the original subdivision, and may be breaking them back out.

Ms. Wasserman said all she wants to know is how many more houses can go up in that area of Running Tide Road.

There was further discussion on this issue, and she was directed to look in the Registry of Deeds to find the information she is seeking.

Doug Bagin, Nancy's husband, asked what type of buffer will be on the new lot. He said water will go downhill toward our home because that will be a higher location. What restrictions, if any, will be on the new lot.

Since no one else came forward, the public comment was closed.

Ms. Volent said she is concerned when the Town Engineer says the application is incomplete. She and Mr. Metcalf had a discussion about the lack of stamp on the survey. She wants the 75 ft. setback from the stream to be delineated on

the plan. She is not clear about where the easement area lies. Are there any vernal pools on the property?

Mr. Metcalf said it was part of the packet. He will verify that when the snow is gone. He also said the DEP does not require approval because they are not looking to pave the entire width of the road. They are planning a 14 ft. width with 2 ft. of grass shoulders on both sides.

Mr. Curry said there is no topo for that lot.

Mr. Metcalf said it is on the map, but it didn't print well.

Mr. Huebener said he thinks it is incomplete. There is no water and sewer line shown and access to the Duffett lot needs to be decided upon.

Mr. Chalot said he would want to see a note from the Fire Chief that he is OK with the access.

Ms. Volent asked about the dead end road rules.

Ms. O'Meara gave a long and detailed summary of the issues that she and the Code Officer have reviewed with Dr. Holt. This application does not trigger Subdivision Review, which means it does not have to comply with the Dead end standard in the Subdivision Ordinance. The conclusion was that this application was all that was needed at this time. She also said that the rights of people to get to secret beach have not changed as a result of this application.

Ms. Volent made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Dr. William Holt to upgrade an existing driveway to provide frontage for a proposed lot located at 15 Running Tide Rd be deemed incomplete.

Mr. Huebener seconded the motion and it passed 4-2 and 1 abstained.

In reply to Mr. Metcalf, the Board indicated they would be receptive to a reduced road width, pending submission of additional information.

No one came forward to comment on items not on the agenda, so the comment period was closed.

The Board voted unanimously to adjourn at 9:45p.m.

Respectfully submitted,

Hiroshi Dolliver  
Minutes Secretary