

**Town of Cape Elizabeth
Ordinance Committee Minutes**

March 7, 2013

8:00 a.m., Town Hall

Present: Kathy Ray, Chair
Jessica Sullivan
David Sherman

Staff: Michael McGovern
Ben McDougal
Maureen O'Meara

Mrs. Ray opened the meeting and asked for action on the minutes of February 8, 2013. The minutes were approved by a vote of 3-0.

Public Comment

Deb Murphy, 24 Pilot Point Rd - Mrs. Murphy summarized her research on building permit notification in other municipalities, such as San Francisco. She prefers the notice be mailed before a building permit is issued. Folks are waiting 30 days before they are initiating construction anyway. It is better to have the discussion before the building permit is approved. If the notice is sent after building permit issuance, the burden is still on the abutter to appeal a permit to the Zoning Board with all the associated costs. If the notice is sent before issuance, perhaps the appeal period could be shortened. She also supports increasing the number of abutters who receive a notice from 50' to 150'. She distributed hand-outs of her research.

Annelise Moson, 22 Trundy Rd - Mrs. Moson supports some sort of preapplication notice period to allow touching base with the neighbors. Currently, people can get a permit and then revise the permit within the 30-day appeal period. If the plan is significantly changed, the 30-day appeal period should start over. She had to delay her vacation to prepare an appeal and then the permit holder changed the permit materials.

Building Permit Notification

Ms. O'Meara reviewed the draft amendment.

Mr. Sherman noted the option B and C and wanted an explanation for noticing any expansion.

Ms. O'Meara explained that setting minimum sizes or location to trigger a notice will require staff to spend more time with each permit to determine if it requires a notice. Making size calculations, especially volume, are time-consuming for staff and might be required of applicants, adding time that applicants would need to prepare the application.

Mr. McDougal also noted that some applicants expect a level of privacy about their home that might be revealed in a building calculation or setback.

Mr. Sherman asked if this proposal will capture all current issues regarding noticing. Mr. McDougal thought it would, especially the activities within 125' of the shoreline.

Mr. McDougal also recommended that no fee to cover the cost of noticing be imposed on the public as he would be challenged more often on when a notice has to be mailed.

The committee generally agreed to eliminate option a, b and c in the draft.

Mrs. Sullivan is concerned with the option to allow the code enforcement officer to send a notice even when the minimum building permit criteria are not met. She wants the standard to as black and white/consistent as possible. It should be simple and clear. This approach will require sending notices on those small bulkhead expansions, but it is the lesser of two evils.

Mrs. Ray agreed it was better to be fair, even with irritations.

Mrs. Sullivan noted that she would not imagine that small expansions would be an issue for a neighbor but it was ok to send the notice anyway.

Mrs. Ray noted that if they do object, there is a process.

The committee discussed the extent of the notice. The draft proposes to send a notice to property owners within 50' of the property for which the building permit has been issued. This results in about 5 notices for the typical lot.

Mrs. Sullivan prefers 50'. A complaint based on intrusion of view could be further away but we can't regulate views.

Mrs. Ray doesn't want to overlegislate.

Mr. Sherman would like to try out the proposal and see how it works. If we discover that we are not capturing enough with the notice, we can revisit the requirement.

Mr. McDougal clarified that York only required a building permit notice for properties within 125' of the Shoreland Zone.

Staff recommended that the description of the notice to be sent specify that the notice must be sent within 5 days of building permit issuance. Mr. Sherman suggested that the notice also include information about the timeline for an appeal. Mr. McDougal said he would recommend standard language for the notice describing the appeal period, but not including a specific date for each notice. The committee agreed.

The committee also agreed to exempt building permits issued as part of a Planning Board or Zoning Board of Appeals approval as those approvals require noticing.

Mr. Sherman does not want to provide a notice prior to issuance. Mrs. Sullivan agreed. It is more onerous for the applicant and makes the process more cumbersome if the notice has to be sent out prior to issuance. The public discussion should start with something concrete, such as a permit that has been issued. It is a clearer way to begin.

Mrs. Ray said it will also demand less staff time.

Ms. O'Meara estimated, based on last year's building permits, that about 60-75 permits will trigger notices annually.

The committee then voted 3-0 to refer the draft amendments to the Town Council, after Mr. Sherman reviewed the final draft to confirm it reflected the intent of the committee.

FOSP Referral

The committee began their review of FOSP recommendations referred by the Town Council.

Mrs. Sullivan, who was a member of the FOSP committee, explained that the key parcels list concept became controversial, although some members remain interested in a list concept. The alternative proposal was to enhance the Conservation Commission's role to be proactive with open space preservation.

Mr. McGovern was concerned that any expenditure of the land acquisition fund would need to be reviewed by the Conservation Commission. Ms. O'Meara explained that the FOSP recommendation was for the Conservation Commission to comment only on open space expenditures, so use of the land acquisition fund for non-open space acquisitions is not included in the recommendation.

Mr. Sherman asked about any negative consequences of the FOSP recommendations. Mrs. Sullivan said that the recommendations create a process that involves the Conservation Commission sooner in open space deliberations. Ms. O'Meara noted that the Town Council did not choose to include the Conservation Commission in its recent deliberations re: Robinson Woods II.

Mr. McGovern said that the direction was good, but he was concerned with analysis paralysis and situations with time constraints.

Mr. Sherman appreciates the goal but wants to preserve opportunity for confidentiality. He likes tapping into the Conservation Commission expertise, but also want to keep flexibility.

Mrs. Ray agreed. We have the ability to tap into the Conservation Commission expertise now. She wants to see the wording.

Mrs. Sullivan commented that the proactive role is uncomfortable. Identifying key parcels is uncomfortable for private property owners.

Mr. Sherman agreed it would be helpful to see the draft language.

Mrs. Sullivan noted that the call to be proactive may need to be tempered with the results of the public opinion survey where residents are satisfied with the open space we currently have and do not support increased funding.

Mr. Sherman suggested that folks may not realize that some open space is privately owned.

Mr. McGovern commented that, in 1964, almost one-half of the town opposed spending \$200,000 to purchase Fort Williams.

Staff was directed to draft up ordinance language implementing the FOSP recommendations for the Ordinance Committee to review.

Public Comment

Elizabeth Serrage, 38 Reef Rd - She has concerns that more area should be included as part of the building permit notification. She recommends 100' to take into consideration weird shaped lots.

Mr. McDougal was asked to comment. He said that 50' should capture the odd lots. In general 5-6 notices would be sent for each permit.

Deborah Maynard, 24 Pilot Point Rd - She supports the 125' in the shoreland zone notice requirement.

The committee agreed to meet on Thursday, May 2nd at 8:00 a.m. and the meeting adjourned at 9:15 a.m.