**Memorandum**

To: Cape Elizabeth Town Council

From: Chairman Jessica Sullivan and Ordinance Committee Chair Katharine Ray

Re: Review Time for Ordinance Amendment Proposals

Date: May 13, 2014

There has been some recent attention on the length of time it takes to have proposed ordinance amendments considered and especially regarding the length of time of planning board review of proposals. The town’s ordinances contain a number of provisions requiring planning board review of proposed amendments and certain other documents. For purposes of context, we have looked at the last five referrals to the planning board. Two were proposals proposed by staff and referred by the council. One proposal was citizen proposed and was referred by the council. Another referral was of proposed amendments to the master plan of Fort Williams Park. Finally, the council had asked for the board to do a thorough review of the recommendations in the comprehensive plan generally referenced as technical amendments to the subdivision ordinance. The table below shows the issues that were referred and the length of time for the planning board to make a report.

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| --- | --- | --- | --- |
|  | **Referral** | **Report** | **Elapsed Time** |
|  | **Date** | **Date** | **Days** |
| High Water Mark Language | 11-Mar-13 | 12-Mar-14 | 366 |
| Restaurant Seats in BA Zone | 12-Aug-13 | 5/22/2013 | 282 |
| Boundary Survey Amendment | 9-Jul-12 | 26-Nov-12 | 195 |
| Fort Williams Park Master Plan Update | 13-Feb-12 | 20-Mar-12 | 45 |
| Subdivision Amendments from Comp Plan | 12-Dec-11 | 29-Mar-13 | 473 |

The three most recent referrals all relate to zoning ordinance amendments and have taken an average of 281 days or 9 and ½ months. The zoning ordinance provides that the planning board shall hold a public hearing on any proposed amendment which nearly guarantees that even the simplest amendment will take nearly three months. And following the planning board vote, the matter will not appear on a council agenda for four months from the first referral as a consequence of the timing of meetings each month. The zoning ordinance also provides that the council shall not consider any amendment to the ordinance until it has received the planning board’s recommendation or not less than 60 days have elapsed since the council referred the item to the planning board. As a custom, the town council has never acted on a proposed amendment invoking the 60 day rule and instead has waited for a recommendation.

Also of note is that with any proposed amendment, it first appears on the council agenda prior to a referral, and upon receiving the referral response from the planning board, the council often refers the issue to its ordinance committee. The council sometimes sets a public hearing at the same time as a referral to the ordinance committee and if the issue is more complicated, it sometimes does so after receiving the recommendation from its ordinance committee. If the issue is quite complex and/or contentious, the council also sometimes schedules a council workshop of the full council. If the council does finally approve an amendment to the zoning ordinance, it is effective 30 days later.

Thus, a typical schedule based on the current duration of review might look like this:

January 15, 2015 Town receives a request to consider a zoning ordinance amendment

February 10, 2015 Council refers request to the planning board

March 4, 2015 1st Appearance on a planning board workshop agenda

December 20, 2015 Planning board makes a recommendation to the town council

January 14, 2016 Council receives planning board report and refers to ordinance committee

March 14, 2016 Council receives recommendation from the ordinance committee

April 14, 2016 Council holds public hearing

May 14, 2016 Council holds final vote

June 14, 2016 New language takes effect

This is a period of 18 months.

A positive attribute of the lengthy review process is that proposals are thoroughly vetted and considered.

The opposing perspective is that citizens and others deserve quicker answers, the length of time makes it difficult for interested parties to determine which of the many meetings are important to attend and folks do not have time to attend the many meetings. There is also uncertainty from the public on whether or not the planning board role is advisory. Issues become divisive and remain so for an extended period prior to the legislative body (the council) having an opportunity to resolve the issues.

It is noted that the ordinance committee has had much quicker resolution of issues with more frequent meetings and with a strong focus on completing its reviews.

**Recommendations**

Most proposed zoning amendments should be referred to the planning board with a timeline for completion. The typical timeline should indicate that a report is due the Friday following the three next regular monthly meetings of the planning board. In the example above, the referral would take place in February. The recommendation would be due the Friday following the regular May meeting of the board.

The planning board should review their rules and regulations and consider allowing limited procedural votes at workshop meetings. The procedural votes to be allowed might be the setting of public hearings on proposed recommendations to the town council on proposed zoning ordinance and zoning map amendments and votes to determine whether or not any board member has a conflict of interest on a pending matter.