

**Town of Cape Elizabeth  
Ordinance Committee Minutes**

May 29, 2014

8:00 a.m., Town Hall

Present: Kathy Ray, Chair  
          Jamie Wagner  
          Jim Walsh

Guests: Jessica Sullivan, Caitlin Jordan, Molly MacAuslan, David Sherman

Staff: Ben McDougal, Code Enforcement Officer  
          Maureen O'Meara, Town Planner

Mrs. Ray thanked Town Council members for attending the committee meeting. The minutes of the February 7, 2014 meeting were approved.

Public Comment

Betsy French, 14 Pilot Point Rd - She supports a flexible system for determining the normal high water line where one measurement would be used for rocky coastline and other measurements for other types of coastline.

Chris Straw, 597 Shore Rd - He explained how to determine district boundaries and that he suggests amending the existing boundary provisions in the Zoning Ordinance. As a former Zoning Board member, he prefers a more organized Zoning tool. Everything can be placed in Sec. 19-2-4. You do not need to address the definition because it was upheld in the Mack case.

Deb Murphy, 24 Pilot Point Rd - She agrees with the prior speakers. The current map is accurate and the proposal will reduce protection on shorelines with rocky ledges. Her property value will be impacted if more development is allowed.

Normal High Water Line amendments

Peter Slovinsky, scientist with the Maine Geological Survey, made a presentation on sea level rise and storm surge. He reviewed sea level rise over millenia with specific data for the last 100 years. Based on current trends, sea level is expected to rise 2' from 2001 to 2100, not including a factor for glacier melt. Depending on the factor used for glacier melt (the current melting rate or an accelerated melting rate), sea level rise of 3' to 6' by 2100 is likely.

Storm surge is the level of water with tidal variations during a storm and without factoring in the movement of water. Sand dune rules now require planning for a 2' rise in water levels. The biggest flooding problems occur when storm surge and high tide occurs at the same time.

Mr. Slovinsky explained that his department has recommended that the Department of Environmental Protection (DEP) definition be changed to reference Highest *Astronomical* Tide (HAst) instead of the current Highest *Annual* Tide (HAT). HAst is a more stable number calculated over a 20 year period. HAst +3' is elevation 14.6 at Portland Head Light. No other communities are using HAst or HAst+1 yet, but some communities have increased the minimum freeboard in floodplain regulations from 1' to 3' (Saco).

Mr. Walsh asked about any discernable difference on impacting structures with HAst +3'? Staff explained that it has been difficult to measure a difference when the current definition can be interpreted multiple ways.

Mrs. Sullivan expressed support for HAst, but was unsure about the +3'. She asked about the impact of the recent melting in Greenland.

Mr. Slovinsky noted that DEP will be moving to HAst next year. The current Cape definition implies a more restrictive interpretation, so the +3' correlates to that, plus considerations for sea level rise and storm surge.

Mr. Sherman said the purpose should not just be easier enforcement, but also keeping structures out of harm's way. It would be helpful to see how the proposed definition is applied in cliff areas compared to the current ordinance.

Mr. McDougal explained that it is almost impossible to apply the current definition. The current definition has mostly been interpreted to be HAT, although other interpretations, such as mean high tide and highest astronomical tide have been used. What has not been consistently used is the "top of the bank," an example of which is the Chatmas Planning Board approval where the top of bank was identified on the plan but the shoreland zoning setback was measured from HAT. He disagrees that the proposed definition will allow more development than the current definition.

The committee agreed that some case scenarios should be used.

Mr. McDougal referenced the Chatmas approval and the Armstrong case. The court basically finds that the Code Enforcement Officer can decide whatever line he chooses under the current definition.

Mr. Sherman asked if the proposal would take away someone's right to develop their property? Mr. McDougal has not found a situation where no development would be allowed, but some development would be pushed back from the shoreline.

There were questions about phasing in the definition change and time for property owners to respond. Mr. McDougal recommended that the definition take effect immediately. Folks would still have 30 days after the Town Council vote to obtain a building permit and then construction must begin within 6 months and demonstrate progress.

Mrs. MacAuslan asked about what to expect when HAst is recalculated. Mr. Slovinsky said the number will shift and he would not be surprised with an increase of 3" - 4" .

Mrs. Volent presented the basis of the Planning Board recommendation. The Planning Board wanted more scientific data to be the basis for the definition and supported HAst. The recommendation to add 3 vertical feet was based on data of trends in sea level rise and public comment that the proposed definition [without additional vertical feet] was weakening the town's current strict definition. The low lying areas of coastline were most impacted by +3', but those areas are located in Resource Protection zones anyway. Safety officials still have to go out in storms to rescue people, so we don't want people to build in unsafe areas.

The committee agreed that staff should show the impact of +1', 2' and 3' using HAst as the base of measurement for review at the next meeting. The Resource Protection Districts should also be included on that map.

### Public Comment

Chris Straw, 597 Shore Rd - He explained why the current definition is not vague. He said the Irving Gas Station on Shore Rd has shut down their gas pumps. With the 100-seat restaurant amendment, a restaurant could locate on the site with not enough on-site parking and no ability to constrict that. No town allows parking to be 1 mile off-site.

Deb Murphy, 24 Pilot Point Rd - She is concerned that HAst will be the comparison starting point. The Zoning Map is the go to and the Registry of Deeds has surveys that show top of bank.

The committee said it would be helpful to have examples submitted in advance of the next meeting. It was agreed that Mr. McDougal would meet with Mrs. Murphy to review her examples and provide the committee with his response.

Next meeting

The committee agreed to meet on June 26th at 8:00. The meeting adjourned at 9:30 a.m.