

**Town of Cape Elizabeth  
Ordinance Committee Minutes**

June 11, 2017

12:03 p.m.

Town Hall

Present:     Patty Grennon, Chair  
              Caitlin Jordan  
              Kathy Ray

Staff: Maureen O'Meara, Town Planner, Robert Malley, Public Works Director

Guests: Kara Lavender Law, Recycling Committee Chair  
Matthew Faulkner, Recycling Committee  
Chelsea Torrey, Recycling Committee

Councilor Grennon called the meeting to order at 12:03 p.m. The minutes of the June 13, 2017 meeting were approved 3-0.

Public Comment

No member of the public chose to speak.

Plastic Bag Ordinance

Councilor Grennon announced that Town Council Chair Jamie Garvin was present as a member of the Ordinance Committee as Councilor Caitlin Jordan has recused herself from this item. Councilor Grennon welcomed representatives from the Recycling Committee. She invited them to make a presentation, after which the Ordinance Committee will discuss next steps.

Kara Lavender Law, Chair of the Recycling Committee, explained that the Polystyrene Foam (PS Foam) and Plastic Bag Ordinances are paired. The Town Council had asked us to look at bags in the 2016 goals. This is a way to minimize community waste and these plastics are hard to recycle. Committee member Matt Faulkner was involved in the City of Portland Ordinance. Following adoption in Portland, Hannaford reported an 80% reduction in plastic bag use. This ordinance targets reduction in single use plastic bags. There are exceptions, such as bags on a roll that folks use for produce.

Matt Faulkner reported that he visited 3 times every retail and restaurant establishment in Cape Elizabeth, except farm stands. He left brochures. At the Cookie Jar, he spoke with an employee but not the owner. Everyone is for it 100%. Councilor Ray asked for a list of businesses visited and the Recycling Committee will provide that.

Councilor Ray noted that a local business has sent an email opposed, the Old Christmas Tree Farm.

Ms. Law reported that Cumberland Farms is ready to start, and will implement just like the store in South Portland. Matt reported that Norm at the IGA is very enthusiastic.

Councilor Garvin asked if the IGA can take the initiative without government action?

Mr. Faulkner said that that individual stores are concerned with competition. Hannaford supports eliminating plastic bags, but does not want to do it alone and supports an overall requirement.

Councilor Grennon asked about plastic bags in the waste stream.

Mr. Faulkner reported that plastic never biodegrades, only photo degrades. It gets into the water; the marine environment is full of it. The Pacific Ocean has swathes of floating plastic. Small fish and birds eat plastic, larger fish eat them and we eat those fish. This is an opportunity, like the Bottle Bill, to reform a disposal-minded society.

Ms. Law said plastics impact town functions. Ecomaine no longer accepts plastic bags. They clog the machines. We are working to inform the public with an article in the Courier, and signage on the silver bullets. Her field of study is plastics in the ocean. Plastics cause clogging, flooding, and litter and those costs are borne by the public.

Councilor Grennon asked about costs to the town. Mr. Malley said we have a problem with Ecomaine because people are still putting plastic bags into the silver bullets. There could be costs to the schools, but one of the biggest issues is litter.

Ms. Law emphasized this is a fee on single use bags, not a ban. NRCM has done research which shows that bans and fees are much more effective than just an educational effort. There are bans and fees in other Maine towns.

Councilor Grennon asked for numbers of ordinances passed in Maine. Committee members mentioned several Maine cities and towns.

Councilor Garvin is surprised with the lack of contention. Mr. Faulkner spoke with Troy Moon, who administers the program for the City of Portland. They just passed the 1-year anniversary. There has been 1 issue in the entire city, with a coffee shop, and they resolved it.

The Ordinance Committee discussed if this was a 2017 goal of the Town Council. It was agreed that this was a 2016 Town Council goal. The 2017 Town Council has different membership and a different set of goals. The committee clarified that this was left over

from the 2016 goals and that the 2017 Town Council had agreed to move this work forward.

Councilor Ray said we should do something but that she would not support fines or penalties. She wants more public education. She could support the South Portland 5 cent program and remembered when Hannaford offered free reusable bags.

Ms. Law emphasized that this is not a fine and the government doesn't collect anything. The store keeps any revenue from the sale of single use bags.

All members of the committee support the fee for single use plastic bags. They also agreed that education should continue.

Councilor Garvin noted stagnant recycling rates for last several years. Education has reached everyone that will change their behavior, now we need bans/charges to move the needle forward. He's seen information on the town website, media stream and we are getting the word out. To be more effective, we need new efforts.

The Recycling Committee members said they are using signage and education, and will review those efforts for any improvements. Ms. Law said that the Recycling Committee had a table at the Strawberry Festival and a quiz. 95% of the people taking the quiz did not know that plastic bags are no longer allowed in the silver bullets. They gave away reusable bags and are working with the schools.

### Polystyrene Foam Ordinance

Ms. Law reviewed the Polystyrene Foam Ordinance (PS Foam). The proposed ordinance is similar to what Portland and South Portland has. Foam is a nuisance worse than the plastic bags. It breaks down into small balls that is impossible to pick up and is transported by wind. PS Foam food containers are the most common litter on beaches. Styrene and benzene, which are components of PS Foam, are both carcinogenic and have impacted oysters. Except for seafood that will be shipped, this would be a ban.

Mr. Faulkner reported that Freeport banned PS Foam in 1990. He has spoken to vendors and most are already compliant. Cumberland Farms will switch to paper cups, and the South Portland store has already.

Councilor Ray asked about packaging raw seafood. Portland made that compromise with fishmongers. At the time, Fedex would only ship seafood if it was shipped in Polystyrene.

Councilor Garvin asked about foam trays used in food packaging. Mr. Faulkner said South Portland is now using a corn foam tray for food packaging. Ms. Law said that she

had met with the School Food Services Director (Esposito). Pond Cove has changed to paper trays. There is some cost so they will need time to implement, but he is supportive to discontinue PS Foam. Councilor Ray would like information on costs.

Councilor Garvin asked about trays at IGA. Mr. Faulkner said he provided IGA an alternative tray option and Norm is supportive. Bird Dog Road House is already compliant.

Ms. Law noted that the public already recognizes that PS Foam is a problem.

Councilor Garvin asked about policing. Mr. Faulkner contacted South Portland and they said it is self-policing. Customers pushed the change. Portland has zero enforcement issues.

The committee asked about the format of the draft ordinance. Ms. Law said she used the ordinance from other towns, and deleted the South Portland records provision. Ms. O'Meara suggested that the substance of both ordinances could be added as separate articles to the existing Solid Waste Ordinance. The committee agreed. Ms. O'Meara will prepare a draft and get it to the Recycling Committee so they will be able to see it, as well as the Ordinance Committee.

The committee will meet on this again on August 8th at noon, with a stop no later than 1:00 p.m.

Councilor Garvin left and Councilor Caitlin Jordan joined the meeting.

### Agricultural Easement Amendment

#### Public Comment:

Becky Fernald, Mitchell Rd - She wants the ordinance amendment fully vetted so the community can have a say. It should not be considered in the midst of a development review. Is it meeting a real life situation? She wants to invite folks from the Land Trust and people from agricultural organizations to participate. This is not just a definition, but a complex issue.

Diane Stern, 1 Columbus Rd - She doesn't understand the need for an amendment. It is a challenge for the public to understand. Real world situations may have problems down the road.

Peter Dixon, 29 Westminster Terrace - If the land is sold, could it be used by someone who wants open space? If there is no road access, it is an island. Could someone get a double bonus for the same land?

Paul Seidman, 21 Oakview Dr - There is no real legal challenge. This is not an emergency.

Becky Fernald - This also impacts Transfer of Development Rights.

Public comment was closed.

Carol Anne Jordan, Chair of the Planning Board, introduced the amendment. She was a member of the FOSP (Future Open Space Preservation) Committee, with Caitlin Jordan and Jessica Sullivan. The Planning Board was surprised with the 5 acre interpretation as a minimum size for an easement. This is an unintended consequence of the definition. TDR (transfer of development rights) exists now and stringent rules apply to it that detail receiving and sending areas. Vetting is done by the Planning Board and the Town Council. This amendment does not have a severe potential impact. She would prefer no 5 acre minimum for farms as modern farms can often operate on less than 5 acres, but the 5 acre minimum was left in as a compromise.

Councilor Grennon acknowledged that the timing is awkward. Planning Board Chair Jordan said it does not change the project.

Councilor Jordan stated that the Planning Board can move forward with project review and can interpret the ordinance to allow an agricultural easement of less than 5 acres as long as the farm is 5 acres. The problem is the "thin ice" which would be left to a judge to decide if there is a lawsuit. Our problem is vulnerability to a lawsuit. We should clarify the ordinance. Councilor Grennon agreed that it is the first time the ordinance has been applied to a real world example and the development will occur regardless of the change.

Ms. O'Meara noted that there are 2 Planning Board members here and wants to clarify that the Maxwell Woods project has received preliminary approval. Once the applicant submits for final approval, the Planning Board will review that for compliance with ordinance standards. No approval has been granted at this time.

Councilor Grennon asked if the land subject to the agricultural easement could be reused to meet an open space requirement. Ms. O'Meara said no. The current ordinance requires land subject to easements to be deducted from gross acreage before calculating density. The town has not allowed double counting in the past and has also not allowed counting "excess" open space preserved.

Planning Board Chair Jordan stated that the easement deed to be submitted will also cover this. Asked why the amendment is needed, she said the easement would preserve the property as farmland and it won't be developed.

Councilor Jordan noted that going forward, with more agricultural easements, there will be more preserved land.

Councilor Ray said the amendment is clarifying something ambiguous. We have clarified other ordinances, most recently the Shooting Range Ordinance. Timing makes some people concerned, unintended consequences have been mentioned, but there is also motivation to stop development in Cape.

Ms. O'Meara noted that the FOSP meeting minutes are posted on the town website and you can see from the minutes that the committee got stuck on creating an agricultural land definition. The definition was added by the Planning Board, by using the state definition. Councilor Jordan agreed.

Planning Board Chair Jordan suggested that farming has changed a lot since the state definition was written and a farm of 2 acres can be viable. She also noted that any open space preserved through development requires approval of both the Planning Board and the Town Council.

The committee reviewed the amendment text, which was drafted by Town Attorney John Wall.

The committee voted 3-0 to send the amendment back to the Town Council for consideration.

#### 19 Wells Rd Tower Overlay District

No member of the public wished to speak.

Planning Board member Joe Chalat (Acting Planning Board Chair for this item) described the Zoning map amendment. He noted that the proposed tower overlay district was adjacent to an existing tower overlay district, it avoided adding structures to the RP1 wetland buffer and preserved town cell coverage. The Planning Board supports the map change.

In response to a question about cell coverage, Ms. O'Meara showed maps from the June 20th Planning Board meeting that demonstrate the proposed tower location provides essentially the same coverage as the existing tower.

The committee noted that improving coverage in underserved parts of town may require installing a tower in those parts of town.

The committee voted 3-0 to send the map amendment back to the Town Council for consideration.

### Next meeting

The next Ordinance Committee meeting will be on Tuesday, August 8th, beginning at 12:00 noon. The first item will be the Plastic Bag and PS Foam Ordinances, followed by the Domestic Fowl ordinance amendment (Ms. O'Meara to provide draft text). A second meeting has been scheduled for August 15th, if needed.

### Public Comment

Priscilla Harrison, 29 Westminster Terrace - She wanted the agricultural easement amendment not to come to you today so we can have more public discussion. This has already gone ahead without enough public discussion. Her questions as she read them from her phone include:

- Why propose the amendment?
- Why is there a co-applicant?
- If new residents can't walk on the open space, how can it be counted?
- This is 2 acres in the residential area, not an agricultural area
- If this is an agricultural easement, how is it the developer didn't buy it?

Councilor Grennon asked Ms. O'Meara to respond to the questions.

- The amendment is proposed to clarify existing provisions regarding how the state farmland definition should be interpreted when an agricultural easement is proposed in new development.
- The co-applicant is proposed to address questions raised about the relationship between the developer and the owner of the farmland.
- The agricultural easement can be counted toward the open space requirement because the Open Space provisions in the Zoning Ordinance explicitly recognize agricultural land as a way to meet the open space requirement.
- Almost all Cape farms are located in a residential district. There is no specific agricultural district designation.
- The developer does not have to buy land, but rather show he has right, title or interest. The owner of the agricultural land are co-applicants, so the Right, Title or Interest submission requirement can be satisfied.

Peter Dixon - This will be an agricultural island if sold.

Ms. O'Meara was asked to provide information. She said the details will be in the agricultural easement deed which will be submitted as part of final review. The applicant has been asked to create access for the easement land.

Mr. Dixon - Who will farm it?

Councilor Jordan responded that anyone who wants to farm it.

Mr. Dixon - He is from away but has been involved in zoning elsewhere.

Councilor Jordan said that it is a misconception that all farming includes driving tractors.

Mr. Dixon - He asked if the easement to be written will make the land an island?

Councilor Grennon suggested it can still be farmed. Councilor Jordan explained how TDR works. Additional questions and answers were exchanged, including challenges in using the town website.

The Ordinance Committee meeting adjourned at 2:03 p.m.