Minutes of the meeting of the Town of Chebeague Island Planning Board
Thursday October 20, 2011 at 7:15 at the Hall

Present: Ernie Burgess, Louise Doughty, Mabel Doughty, Jane Frizzell, Charles Hall and Beth Howe (Chair)
Absent: Sam Birkett

Also present: Ron Tozier, CEO, and Donna Damon

1. Election of a chairperson and vice-chairperson.
Beth said he would be glad to cease being Chair and would continue to write memos on the issues before the Board. Jane nominated Beth, seconded by Ernie. The vote was unanimously in favor. Ernie suggested Sam Birkett as Vice-Chair but said it would be better to do this at the next meeting when she would be present. Everyone agreed.

2. Minutes
Jane had a correction in the minutes of the last meeting. In discussing the needs of fishermen she had been talking about fish houses, not other kinds of sheds. Mabel moved, seconded by Louise to accept the minutes of the Meeting of November 18, 2010 and the amended minutes of September 15, 2011. Passed unanimously.

3. Sheds in the setback
Beth read out the amendment as it is being proposed in the agenda. She said she had also heard from Sam who said she had decided that she was opposed to setting a maximum size on sheds in the setback. We have had lots of sheds built in the past without problems and it should be up to individuals to decide what they need. Charles agreed.

Ernie said we could define “shops” which would be larger and “sheds” which would be smaller. Beth asked how large he thought sheds should be to be useful to fishermen. He said maybe 16’ by 20’. Ron said make it a multiple of sheets of plywood – 16’ x 24 or 384 square feet. Donna said the barn that Doug is building is 30 x 30’, would that be made illegal? Beth asked if it was in the back or side setback. Donna said that Doug had measured carefully to be sure it was not. Beth said that then it would be perfectly legal even if the Board made this change.

Ron said that not adding the shed size to the ordinance would still leave it open to an applicant to appeal a decision like the one that Paul White made relative to the Boat Yard, that their first new shed was a garage and was too large. That ruling was overturned by the Board of Appeals.

Donna said that fishermen might want to have sheds that were taller than 16 feet for things like drying nets. Beth said she finds it useful to be able to keep things on her shed rafters. Ron said 16 feet is pretty tall. Donna said that probably the drying of nets is not done a lot now, anyway. Someone suggested increasing the size to 20 feet.

Jane said she is still in favor of having a size limit on sheds in the setback. She moved the language that was in the agenda but with the larger sizes:
Sections 204.1.D and E and 204.3.D and E would be amended to to read:
The Following minimum setbacks are required for structures in the IR[IB] district on lots
that are more than 1.5 acres in size or that were created on or after August 1, 1975, [less
than 1.5 acres and that were created on or before July 31,1975] except that driveways and
sheds no larger than 380 square feet and no higher than 20 feet, are permitted to a
minimum setback of 15 feet from the side and rear lot lines. (changes in italics)

Ron said that the major reason for having such a size limit is to protect neighbors. Ernie said this
might be a particular issue about the height of sheds in areas near the shore, since a tall shed
might block the view of the neighbor behind.

Mabel seconded Jane’s motion. The vote was unanimously in favor of the motion as amended.

Beth asked whether there was any interest in also adopting a definition of sheds that would say
that they were for storage and work but not for sleeping. Several people said that it is traditional
for kids and overflow guests to sleep in sheds. Donna said what difference is it if kinds sleep in
a tent in the yard or a shed? Ron said he did not want to be the shed police for sleeping. He can
write on building permits for sheds that they are not to be used for sleeping. It was agreed that
no definition of “shed” would be included in the ordinance.

4. Road frontage and back lots
Beth summarized the problem here. Cumberland adopted language in 1975 that said that lots
without frontage on a public ROW have to be 3 acres rather than 1.5. This is now an issue that
comes up fairly regularly because we have a lot of private roads, and people want to be able to
build on 1.5 acre lots. When they come to the CEO asking for this, he often does not know
whether a private road may have become a public ROW – there are several ways this can
happen: under section 425.1 in the Zoning Ordinance, by being accepted by the Town, by being
recorded at the registry of Deeds, or by prescriptive use – so it is difficult to determine whether
the lot has to be 3 acres or can be 1.5.

Louise said that Deer Point Road and its tributaries like Proctor Drive and the extension of it to
the Hahns are a good example of the complexities and problems here.

Ron gave several examples of private roads where people have asked for 1.5 acre lots: Lessing
Road, Meeting House Lane and the Bowen’s lot behind the Firehouse. He said that especially in
the latter two cases which are not on the shore, allowing 1.5 acre lots would enable people with
less income to build since they could either buy a 1.5 rather than a 3 acre lot, or if they bought
the whole lot they could divide it and sell part. Beth said that one of the problems is that the
CEO has little way to know what the past history and ownership of the road has been. Donna
gave a brief sketch of the history of Lessing road since it was first built in the 1800s. Beth said
we should know about roads accepted by the Town – The Cumberland Council refused to accept
Deer Point road when the residents there asked for it. She thinks they are all included in the
existing list of public roads.

Beth said her primary concern is that as private roads get more houses on them, their inadequate
construction will make them difficult to use and pose problems for emergency vehicles. Deer
Point Road is an example. Charles said that they are usually quite short, so not many houses could be built and the roads would probably be ok. Beth said that one of the roads across from the cemetery was closed last spring by the builders using it because it was so bad. Donna said it was not that the road was bad, they just didn’t want people going down there. That road was improved some years ago and is fine.

Jane asked why Cumberland adopted the language about back lots. Beth said she thought it was because of the road issues. Donna said it was really because people wanted less development on the island. They adopted the same kind of language about West Cumberland. Ron said he thinks the central issue here is whether members of the Board want to make more development possible or not.

Ron said there is a difference between dealing with new private roads and existing ones. He is now requiring applicants to comply with Section 425.1 and provide a road plan to him before they build a driveway. It would be straightforward to include standards in the ordinance for these new roads, perhaps ones like Cumberland’s that depend on how many houses will be served. He also noted that the language in the section on back lots requires private rights of way to be at least 50” wide. He thinks this is wider than is necessary on the island. Someone else said the private road does not have to be larger than the road it goes into. How wide are Chebeague roads generally? Mabel said 48 feet. Donna said it varies.

Beth said that one way to deal with the question of whether existing private roads have become public ROWs would be to have someone like Donna research their development. Donna groaned. There was a discussion of whether being “recorded in the Registry of Deeds” meant that a road was simply mentioned in someone’s deed. This would mean that most private roads are recorded and would therefore be public ROWs by that definition. Or does the road itself have to be registered and described?

Louise asked how we know whether a road has become a public ROW by “prescriptive use”? What about all the non-residents who go down Deer Point Road to the end of the point? Beth said we could get a lawyer to come give us information on this.

Beth also asked how we deal with the wording about “prior to the adoption of this ordinance” in section 403.1? Is that before 2007, or before the particular provision was added or 1949 when Cumberland adopted its first zoning ordinance? Ron said he has asked the Town’s lawyer about this language and that there is a legal doctrine concerning “unintended consequences” that makes such language inoperative.

Beth asked whether it would be a sensible solution to the issue of lot size and road frontage to leave the decisions about lot size up to the Board of Appeals as Section 403.2 allows. Ron said that the problem with that is that the definition of a “variance” (section 110.167) limits the Board of Appeals to giving variances only for “height, area, size of structure, size of setbacks and lot coverage, and size of signs”. Road frontage is not mentioned. Beth asked whether it would be a reasonable solution to add “road frontage” to the list of variances? She answered herself by saying that it would make the pattern of allowing 1.5 rather than 3 acre lots rather random,
depending on whether the property owner was willing to go to the trouble to apply for a variance after the CEO said “no”.

Jane asked how these possible zoning changes related to sheds and back lots relate to the larger issue of creating a new Zoning Ordinance. Beth said that she thought everyone who worked on the Comprehensive Plan should have a year’s rest before they tackled the new zoning ordinance. So maybe in the next fiscal year’s budget we will include money for zoning and have the Selectmen appoint a committee. But in the meantime, these issues have come up in carrying out the existing ordinance and it seemed like it would be useful to discuss them and maybe propose some initial changes.

5. Other Business
Ron said he has to go. Beth said she would review the discussion and pull together proposals on back lots and road frontage that we can consider at another meeting.

a. Ron asked whether the Planning Board would like to ask the Selectmen to adopt a policy of waiving building fees for projects by non-profits. This comes up because CICA is asking for building, plumbing, electrical and other permits for their year-round housing on School House Road. Donna said there was already a policy about that that the Selectmen had developed to waive Town fees. Beth said she thought that the precedent went the other way. Kids Place was required to pay building fees. Ron said that was what he understood as the policy. But we could ask the Selectmen at their next meeting to change it. The Board didn’t respond clearly about whether to do that or not.

b. Ron reported on the status of inspections on Hope Island. He and Mike Morse of DEP were turned away when they went out to inspect the likely violations in the shoreland zone, which could be seen clearly in aerial photos and from an inspection from a boat. But Mr. Cacoulides said he would arrange for them to come out this week or next. If he does not do this, the next step would be to get a warrant to go out. The State can issue one for Morse, and the Town would have to do the same for Ron.

However the issue about the shoreland zone violations is different from the issue that bothers most Chebeaguerers—the noise from excavations on Hope. The Cacoulides say that now they are digging a trench for water service to a new building. This is legal. The only way to regulate it would be to adopt a noise ordinance that would restrict the amount of noise or the times that noise can be made. Or the Town could adopt a nuisance ordinance. In relation to the more general issue of mining gravel, this also is a legal activity but the Cacoulides did not come to the Planning Board to get a permit to do it. However, it may be necessary to change/strengthen the mineral extraction language in our ordinance to adequately deal with their excavation activities.

Respectfully submitted,

Beth Howe
Meeting of the TOCI Planning Board October 20, 2011 at 7:15 at the Hall

Agenda

1. Election of Chair and Vice Chair. These officers serve for a year and may be reelected.

2. Minutes of meetings of November 18, 2010 and of September 15, 2011

3. Proposed amendment to the Zoning Ordinance
   Sections 204.1.D and E and 204.3.D and E would be amended to to read:
   The following minimum setbacks are required for structures in the IR[IB] district on lots that are
   more than 1.5 acres in size or that were created on or after August 1, 1975, [less than 1.5 acres
   and that were created on or before July 31, 1975] except that driveways and sheds no larger than
   225 square feet and no higher than 16 feet, are permitted to a minimum setback of 15 feet from
   the side and rear lot lines

   We could also include a minimal definition that “A shed is a building to be used for storage or
   work. Sleeping in sheds is prohibited.”

   The motions in both of these cases would simply be to hold a public hearing on these proposed
   changes.

4. Discussion of the requirements for road frontage of back lots. See attached memo.

5. Other business.
October 12, 2011

To: TOCI Planning Board
From: Beth Howe
Re: Zoning Requirements for Road Frontage of “Back Lots”

I suggested that at the October Planning Board Meeting we might discuss road requirements for back lots.

Here’s my definition of this seemingly obscure problem which comes to the CEO and to me fairly often, posed by people who want to have 1.5 acre lots in areas that are not served by Town roads. It has been difficult to work out any consistent response to these requests because the wording of the Zoning Ordinance is somewhat unclear, but also we don’t have much information on the ownership and history of the roads that do serve these areas.

I have not tried this out on Ron Tozier yet – he will get the memo when you do. He may define the issue somewhat differently. Hopefully he will be able to come to this discussion.