Minutes of the meeting of the TOCI Planning Board, Thursday February 16, 2012 at 7:15 at the Hall

Present: Sam Birkett, Ernie Burgess, Louise Doughty, Mabel Doughty, Jane Frizzell, Charles Hall and Beth Howe (Chair).
Also present: Ron Tozier, CEO
Donna Damon and Kim Boehm

1. Minutes
Jane moved, seconded by Mabel, to approve the minutes of December 8, 2011. Approved unanimously.

2. Possible regulation of noise and light pollution
Beth said these issues had come up in relation to Hope Island and that there had been some interest in looking at regulations related to them. So she had explored ordinances from other places and had tried, without success, to reach some experts.

Any regulations adopted would obviously have to apply to the entire Town so a basic question is whether the need for such regulation is sufficient to justify the additional regulation. She is not sure it would, and it might be more productive to look for other approaches to dealing with light and noise pollution issues when they come up. Several people suggested letters from neighbors who are bothered by noise or light intrusion.

Noise
Hope Island specifics: Lee Bowman called Cacoulides before Christmas and asked if the noise of the gravel extraction could be stopped. It was moved to the other side of the island. Ron said he had talked to Alex ???? and that the quieter machine has broken down, so they have to use the louder one. They are removing some ledge in order to be able to maneuver trucks. After this project, they will work on creating a pasture on the ridge of the island. Ron said he had measured the decibel level from Chebeague recently and the sound of extraction on the Cliff Island side was about 50 db.

Charles asked how sound is measured? Ron said he had talked to a sound engineer and he said his firm could come out to measure the sound. It would be done at the Hope Island property line, i.e. the shore. Beth said that she thought that the issue here is not so much the decibel level of the sound but the constant percussive nature of it. But she had not found any ordinances that regulate that aspect of sound.

Ernie said he thought it would make the most sense to have them come to the Board of Appeals and the Planning Board for a permit for the work. This could be under the provisions of Section 412: Extraction of Earth Materials. Beth said the complication there is that this isn’t a gravel pit that stays in one place. Ron said that this would be a way to get anyone who was making a lot of noise to come to a public meeting and hear the public’s concerns. Someone asked if it matters under the Zoning whether an operation is a commercial one? Beth said she did not know. In a noise ordinance, any kind of noise, commercial or non-commercial would be covered. But this might be different for a zoning ordinance.
Donna said that if any revisions were made in the earth material extraction part of the zoning ordinance, she would like to see regulation of private borrow pits which leave holes in the earth which fill up with water and can be a hazard.

Donna also said that in one case she was familiar with there had been an overall time limit for the amount of blasting they could do. Or it might be possible to say that excavation could not go on for longer than some set time. Also Donna mentioned a business on Chebeague where the hours of operation were limited from 7am to 5pm because of noise. This indicates that conditions could be set on an operation. Beth said that the times in the noise ordinances she had looked at were from 7 or 8am to 9, 10, 11pm or midnight.

Beth said she thought that if more word was going to be done on this issue, it might make more sense to focus on extraction rather than on noise per se.

**Light**
Kim said that light trespass is a real issue. There was a big flap on Cousins Island about the lighting for the new turnaround. There are many ways that light pollution can be reduced – motion sensors, turning the lights off when business ends for the night, using LED lights which spread light around less, having light fixtures which direct the light down and not out and up into the sky.

Beth said that in general the issue in lighting ordinances is the balance between sight necessary for safety versus externalities from it that bother wildlife or people. The particular characteristics of a place or situation can affect this balance. For example, the Illuminating Engineering Society’s model lighting ordinance, street lights are exempt because of safety. But in the Board’s discussion, examples were given of people who are bothered by them and counter examples about how it is possible to get used to them.

Jane, Mabel and Sam all said that that light pollution can be an issue on the island and that without an ordinance there is no framework for dealing with it. Beth said she will do some more work on how this might be done.

Beth said it was after 9:00 and time to end. There was no discussion of the agenda item on questions about town roads.

Respectfully submitted,

Beth Howe
February 10, 2012

To: TOCI Planning Board  
From: Beth Howe, Chair  
Re: noise and light pollution

These are the two issues that were raised in relation to Hope Island at our Planning Board meeting before Christmas. I have been looking into ways of regulating both and I can’t say that I’ve come up with anything that exactly fits what we need. But I’ll explain first what I’ve come up with and then lay out some options.

One thing to remember about both of these issues, is that if we choose to try to regulate noise and excessive lighting, it has to apply to everyone in the Town. In relation to Hope Island, specifically, we could tell them that we are considering adopting ordinances on these two things because of them and encourage them to change their practices to avoid having to have such regulations.

**Noise Pollution**

Noise is sound that people don’t like. Of course this varies a lot from person to person. Some sound regulations define some sounds as “nuisance noises”. A list from an ordinance in Chapel Hill NC is attached. The assumption behind such a list is that “everyone” considers these to be noise.

Some kinds of sound can be harmful to people. The standard way to measure sound is in decibels¹ which is a measure of the pressure of sound waves. I think it is generally a measure of loudness. A list of the decibels produced by various sound-making devices is attached, as is a table of standards for the amount of exposure adults can safely have. Presumably the measurement of the decibels must be made at your ear. But in regulatory ordinances, the measurement place is usually the property line of the person making the noise.

The standards for “how loud/how long” could give us one rationale for regulating the sound of extracting gravel. If the decibel level is 85 decibels or less on the shore at Hope Island, then it is “safe” for 8 hours. But if it is as loud as 88 decibels, it could be limited to 4 hours. Of course, we also need to consider whether there are other sources of sound on Chebeague that are also in this kind of range, and that we don’t want to regulate.

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¹ **A-WEIGHTED SOUND LEVEL.** A measure of sound pressure level designed to reflect the acuity of the human ear, which does not respond equally to all frequencies. The ear is less efficient at low and high frequencies than at medium or speech-range frequencies. Therefore, to describe a sound containing a wide range of frequencies in a manner representative of the ear's response, it is necessary to reduce the effects of the low and high frequencies with respect to the medium frequencies. The resultant sound level is said to be A-weighted, and the units are dBA. The A-weighted sound level is also called the noise level. Sound level meters have an A-weighting network for measuring A-weighted sound level.

dBA. Unit of sound level. The weighted sound pressure level by the use of the A metering characteristic and weighting specified in ANSI Specifications for Sound Level Metere,
Ordinances, like the short one for Ogunquit (attached), that regulate sound levels generally specify acceptable decibel levels in different parts of a community (residential vs business vs industrial, for example) and at different times of day. The sound must be “continuous, regular or frequent”. In Ogunquit’s case they limit this continuous sound of up to 60 dB(A) in business districts and 55 dB(A) in residential areas during the day, and less at night. This is about the level of conversational speech.

I expect that the decibel level on the shore at Hope Island may be less than the “dangerous” levels but maybe louder than conversational speech, so this approach might include that noise. Again, if we adopted regulations of this sort, we would have to think about what kind of activities there are on the island that are also in this kind of sound range from chain saws and generators to amplified or perhaps non-amplified music.

Beyond the issue of how loud the sound is, is the issue of what kind of sound it is. I’ve been contacting organizations concerned with sound regulation to see if there are any places that try to regulate “IMPULSIVE NOISE” defined as: a) Either a single sound pressure peak (with either a rise time less than 200 milliseconds or total duration less than 200 milliseconds) or multiple sound pressure peaks (with either rise time less than 200 milliseconds or total duration less than 200 milliseconds) spaced at least by 200 millisecond pauses, b) A sharp sound pressure peak occurring in a short interval of time. But I haven’t found any expert that I can just call for information, so I have left a number of email messages asking about this and may have some response before Thursday.

Actions
We need to measure the sound levels of the gravel extraction at the Hope Island shore, as well as other common sounds on the island at the boundary of the property that makes them.

Considerations
Would having a noise ordinance really accomplish what we want to do? Would it involve “too much” regulation in a Town that isn’t wild about regulations.

Light Pollution
Light pollution can be a problem of light spilling over onto a neighbor’s property. But there are some “collective” impacts of light that are somewhat different from sound. Large amounts of indoor and outdoor lighting also light up the night sky and obscure the stars. The first light regulations were adopted in places like Tucson where there are astronomical observatories. Light may also be harmful to some kinds of wildlife. For example, Sanibel Island Florida regulates lighting to protect sea turtle hatchlings that instinctively head toward light, which now would usually direct them inland.

Light is measured in lumens or watts, but I don’t think there is a meter for measuring it on the spot. It appears that there is no tool for measuring light the way a decibel meter measures sound, on a given spot. But light fixtures (“luminaires” which may have more than one bulb) are rated as to the number of lumens they give off.
I have attached “simple guidelines for lighting regulations” put out by the International Dark-Sky Association.

They also have a model lighting ordinance that I have partly summarized here:

Its purposes are to
- Define amounts of outdoor lighting suitable for “safety, security, utility, productivity, enjoyment and commerce”.
- Minimize offsite impacts of lighting, both light and glare
- Curtail sky-glow
- Help protect the natural environment
- Conserve energy

It defines zones where more or less light is suitable, from LZ0 – no outdoor artificial light to LZ 4 for heavy industrial uses. (See two attached sheets)

There are two possible regulatory approaches:
- Prescriptive method (more suitable for communities who do not have a lighting professional. This defines the initial lumen allowance for all outdoor lights (for parking lots, lights at doors and for sensitive security areas), either per parking space or per square foot of hardscape (see two tables attached). It requires that lights be shielded so that no light is emitted above 90 degrees. In addition there is a rating system for lights that measures backlight, uplight and glare (BUG). It can be used to supplement the per parking space or per sf of hardscape approach.

- Performance method which uses a total site lumen limit.

It relies substantially on requiring/encouraging lighting that goes off at night after “normal” hours, is motion-sensitive and/or sensitive to daylight.

Special permits may be issued for unusual lighting situations.

The model ordinance exempts street lights, public monuments, seasonal lights less than 10 watts and 70 lumens and lights required by building code for safety.

Actions
It would also be useful here to know how lighting fixtures used on the island (and on Hope if that is possible) relate to these regulatory standards.

Considerations
It would be possible to adopt either this whole scheme or parts of it. Again, we have the problem of criticism of more regulation. But people here do care about being able to see the stars.
Good morning Beth, Pete Pellerin, is doing the propane on the island, just bought Meredith's house and wants to fill the small propane tanks up there and is hoping the business will grow into something more. I do not feel I should call this a home occupation because it doesn't really fit under residential use. Do you agree? If we don't allow under the Home Occupation provision, he has get this lot changed into the commercial zone. Has this been done yet? I know all business goes before the planning board for site review. 206.2 Page 45. This is a change of use, looks like Eric has to deem it a minor project. The special exception rule might apply like it does for gas stations 204.3.B.

Do you agree with my reading of this? I am not trying to cause Pete undue problems but if this becomes I holding facility for propane, and I think this is where he is heading, we need to be careful.

Thanks for your thoughts, Ron

I am meeting with him this morning
On Feb 9, 2012, at 4:43 PM, Beth Howe wrote:

> Ron
>
> That is very impressive (and a test for the eyes, as well). It seems
> like a good idea to give this to builders and owners, though it is
> pretty formidable. I was wondering whether our affordable duplex will
> meet the test; and I can tell some things where our house wouldn't pass.
> A couple of typos:
> Exterior2. street or road
> Decks . . . 7. flam?? Should be from?
> 21 Withir should be within?
> I think I got tired toward the end and wasn't as careful.
> 
> > Beth
> >
> > ---Original Message---
> > From: Shop [mailto:toziergroup@gmail.com]
> > Sent: Thursday, February 09, 2012 5:06 AM
> > To: Beth Howe
> > Subject: Re: Saturday meeting
> >
> >
> > Thanks Beth for the info, Look forward to it. I prepared this
> > checklist to help people in the inspection process.
> > Not finished with it yet but it is a start. We use 2003 IRC, as you
> > know, which this is based on.
> > Best, Ron
Hi Jason, This helps but have to have a date and documentation when the lot was split to see if you fall under the grandfather clause of the shoreland zoning law. There must be a deed record of the transfer which I would have to have a copy of for the records.

Best, Ron

On Feb 8, 2012, at 11:27 AM, Kendeigh Family wrote:

> Hello Ron,
>
> Here is the information that you requested to the best of my knowledge and information at hand.
>
> The houses were both built about 1900. We purchased the property in 2004. It was a larger parcel and not clear when it was split. Tink that owns the property next door and her family owned all the land at one time. I can contact her for more information.
>
> The attachments are the proposed split and paperwork we found in the house on past surveys.
>
> Jason
>
> <Letter to Town of Chebeague.pdf>
>
>
> On Feb 3, 2012, at 6:01 AM, Shop wrote:
>
> >> Hi Jason, Let me contact DEP for you. I am expecting a call back. What is the history of the property?
> >> When were the houses built? Was this part of a bigger parcel and if so, when was it split?
> >> When did you buy it?
> >> I need this info before I can see if this fits into the grandfather clause.
> >> Best, Ron
> >>
> >> On Feb 2, 2012, at 3:57 PM, Kendeigh Family wrote:
> >>
> >>> Thank you for the information Ron.
> >>>
> >>> Can your opinion be put into a letter so I can use the information in an appeal? I am not clear that an email would constitute a formal decision.
> >>> Can I ask who would be a contact at DEP so I can connect with them to get more information?
> >>>
> >>> Thanks,
> > Jason
> >>>
> >>> On Feb 2, 2012, at 1:17 PM, Ronald Tozier wrote:
Hi Jason, The issue with the property and the proposed split is that state law requires 150' of shore frontage and this has to be 75' deep, it can't taper in or be less than 150' for that 75'. The drawings I saw by Mr. Bowman showed you couldn't meet that state requirement. The Town of Chebeague can't grant an exception to a state rule. You would have to get a state reduction of this requirement, as I see it. I have a call into the state to confirm this.

The other issue is the back lot, needing 3 areas. This is a local issue which would have to go to the board of appeals. I can't say how they would rule. You need to deal with the shore-land issue first, as this is more of an issue.

Let me get back to you after I hear back from D.E.P.

Sincerely, Ron Tozier
Beth Howe

To: Michael Stultz
subject: RE: Chebeague Island-For: Michael Stultz

Michael

Yes, most of us (at least those with some sense) don’t go in. But we donate to the Rec by putting money on people who are brave enough to do it. So I’ll set things up for February 18.

Beth

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From: Michael Stultz [mailto:msultz@memun.org]
Sent: Monday, January 23, 2012 1:55 PM
To: 'bethhowe@chebeague.net'
Subject: RE: Chebeague Island-For: Michael Stultz

Beth,

I like the idea of the 18th, the polar bear dip. Should be fun, though I will enjoy the fun with my clothes on, out of the water.

Michael

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From: Mary Merrifield
Sent: Monday, January 23, 2012 1:53 PM
To: Michael Stultz
Subject: FW: Chebeague Island-For: Michael Stultz

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From: Beth Howe [mailto:bethhowe@chebeague.net]
Sent: Monday, January 23, 2012 1:32 PM
To: Legal Services Department
Cc: 'Eric Dyer'
Subject: Chebeague Island-For: Michael Stultz

Michael

We were rushing off to the ferry when you called on Friday, so I didn’t have time to think about Saturday versus Sunday for your visit. So since I want you to come, I just said yes. But as I’ve thought it over, Sunday is more of an issue that Saturday, in general and February 5 in specific. In general people here, including members of the Planning and Select Boards, do go to church. In specific, January 5 is the day of the Superbowl – I know it’s not till late afternoon or evening. So how about Saturday February 11 instead? If you wanted to do the 18th, that is the day of the Rec Center’s Polar Plunge (at noon assorted kids and adults run into the water) and the Chili, Chowder, Soup challenge lunch afterward, if you would like some local color.

Instructions for getting here. From I-295, you go off at the Cumberland-Yarmouth exit. If you come over on the Falmouth Spur, this is the next exit to the northeast, though it’s a fair distance. If you are just on 295, coming up from Portland, you go past the Bucknam Road exit in Falmouth and the Falmouth spur exit, and it is the next exit. You go up the exit ramp to Route 1 and turn left. At the intersection there is also a sign pointing to the CTC Chebeague parking lot. You go maybe ¾ mile and take the first right off of Route 1 – the parking lot is pretty obvious. You get a sticker for
your car – it costs $15 per day and I will reimburse you. You go over to the bus, which is waiting at the parking lot. I think you can also get a round-trip boat ticket from the driver, though that may only apply in the summer. Otherwise, you get the boat ticket on the boat. I will reimburse you for that, too. The ferry usually arrives about 15 minutes from the time the bus gets to the Cousins Island wharf. The boat takes another 15 minutes to get back to the island, and I will meet you at the Stone Wharf on the island.

I decided that the best background piece to send you is what I wrote for the Planning Board before we had our first discussion about this issue of private roads and back lots. The Municipal Roads Manual went quite a way toward giving me a better idea of the “lay of the land” on the issues related to different kinds of roads. I believe that the Town of Chebeague Island has no systematic information other than past practice of things like maintenance, of who owns our roads. The attached map shows only one easement, but I expect there may be others. It does give you an idea of all the non-town roads discussed in the background piece. We do have one resident, Donna Damon, who knows a lot about the roads from doing deed research all over the island. She has never done any systematic report on this. I will invite her to come to your talk. I guess my “big” question about the legal status of our roads is whether it is worth the time and money that would be required to create a legal inventory of the island’s roads, as described in Chapter 10. The Road Plan Committee, which will also be invited to your talk, has done a physical inventory using RSMS, and we have been working on a plan for road repair and maintenance.

I hope this material helps you understand where I’m coming from. I will work on a list of more specific questions, as well.

Beth
Zoning Requirements for Road Frontage of “Back Lots”
The issues are: how large should lots that do not have frontage on a “public right of way” be? What is a “public ROW versus a private one? As you will see later in this memo, Chebeague has 28 public roads – roads paid for and maintained by the Town. It has 55 other roads. But it is not accurate to describe all of these as “private rights of way.” In fact, the TOCI may have more public ROWs than it has public roads. Why is this the case and why is it a problem?

Cumberland History of Road Frontage of Back Lots
Remember that the language of our Zoning Ordinance is exactly the language that Cumberland had in 2007.

Cumberland adopted zoning in 1949. The first mention of back lots was a provision in 1975. Any lot not abutting on a public ROW or road, but with access by a private ROW had to be twice as large as the usual minimum size lot for that zoning district. It also had to have an access road at least 30 feet wide for a single house, 40 feet wide for two houses, and 50 feet wide for three houses or more. And the houses had to be at least 200 feet back from the public ROW.

The term “public ROWs” is used but not defined in 1975. There were no standards for the construction of any streets until 1984 or maybe later.

In the 1984 revision of the Zoning Ordinance, ROW is defined for the first time as a legally created public or private right to cross property of another. Private ROWs are created by deed. Public ROWs are created by deed, by dedication and acceptance, by laying out the road and taking the land for this purpose, or by public prescriptive use.

Back lots, covered in Sect 403 (same section number in our ordinance) were those which do not have the required lot frontage on a public ROW. They were required to have twice the minimum lot size and must have a private ROW of at least 50 feet (with minor exceptions).

In 2003 Cumberland had a major revision of the provisions related to private streets. The problem was that over the years, many private ROW/streets had been created and after a while the people who lived on them would ask the Town to take them over as public streets and maintain and plow them. The result was that the Town ended up with a lot of “streets” that were poorly constructed and expensive to maintain. In order to reduce this practice the Town became much more strict about accepting private streets. And it also adopted well-defined, fairly strict standards for the construction of private streets serving two or more dwelling units.

Each new private street had to be developed by a registered surveyor and the application for the street would be reviewed and signed by the CEO and recorded in the registry of deeds. It would also say on the plan that the Town was not responsible for maintenance/plowing of the street. The standards for these streets varied in terms of width, minimum base, wearing surface, grade, and engineering and stormwater rules depending on the number of dwelling units on the street. At 11+ units the standards were the same as residential access streets in the Subdivision Ordinance. If more than one house was served, the owners had to have a maintenance agreement for the road.

BUT these construction, recording and maintenance standards applied only to the mainland. The only language related to Chebeague was:
"an applicant shall submit to the CEO an application for a private right of way required to provide access to a structure . . . The application shall specify the location of the proposed ROW, the proposed width, the materials to be utilized in the construction of the road, grades, provisions for drainage, and sight distances at any turning radius. The CEO shall approve any plan that makes adequate provision for these items, provided that the Fire Chief approves the application for sufficiency of access for emergency vehicles.

[In our ordinance this is section 425.1. There are more elaborate requirements for roads in the shoreland zone, set by the State.]

The Issue of Road Strength
Why do road standards matter? The logic behind road standards is that the more traffic a road has to carry, the stronger it needs to be. The standards matter because roads made by simply cutting down the trees, scraping away the top layers of soil and replacing them with a little gravel, sand or asphalt, are not able to stand up to much wear and tear. Rocks come up through them in the winter. They get gullies. Water beneath them oozes up into the road itself and during the winter the freezing and thawing breaks up the road. The pavement, if there is any, breaks up. Roads like this are not strong. Think of Deer Point Road.

The problem that has resulted from Cumberland’s zoning history is that there have never been any formal standards for the construction of any roads on Chebeague. Roads owned by the Town were often poorly constructed many years ago, and do not meet any modern road standards for things like the road base which gives a road the strength to carry traffic. [They don’t meet modern road standards for things like width, either. But this is not an issue of the strength of the road, just a matter of how much traffic it can carry at what speed, and there seems to be agreement on the island that having wider, faster roads would not be a good thing.]

Private roads, many of which are also quite old, and many of which were originally built as just driveways to one house, are usually “gravel” — meaning, on Chebeague, just dirt without any or much gravel base underneath. They generally are also narrow, which is probably not a problem unless they are too narrow (with low trees) for the fire-engines and ambulance to negotiate.

So the more houses there are along a road, the more important it is to have a road that is strong enough to support the traffic the houses generate; and if some of those houses are occupied year-round, the roads have to be passable year-round even to a fire-engine. The mainland Cumberland standards for private roads require a 12” deep gravel base for a road serving one or two houses, and 15” of gravel for roads serving from 3 to 10 houses. Both have to have a 3” thick “wearing surface” of either gravel or asphalt. There is nothing sacred about these standards, but they show the logic.

Back Lots and Roads
The logic about building on lots that do not have the required frontage on a public road, is that they have to be served by private ROWs. And since the assumption is that private roads are less strong than public ones, then the number of houses that can be served should be limited. This is done by doubling the minimum lot size – in Chebeague’s case, from 1.5 acres to 3 acres. (Donna Damon says a that, perhaps more important, this was seen as a way of limiting the amount of development that could occur.)
I think that since 1975 the general practice of granting building permits in Cumberland was that any lot that did not have 150 feet of frontage on a Town-maintained road had to be a “back lot” of three or more acres. Along North Road, for example, there are many lots that run all the way from North Road to the shore. Many have only 150 feet on North Road. Officially these are not “back-lots”, though many are much larger than the 1.5 acre minimum lot size. But any lot carved out of one of these thin lots is supposed to be a back lot.

In fact, it is difficult to know how many lots over the years may have been created that did not have 150 feet of frontage on a Town road that were smaller than three acres. Particularly in the area between North Road and the shore, roads that probably began as driveways to a single house have been extended along the shore to serve several more houses. I have not done any research on whether these, and other lots like them, are 3 acres or larger.

Now, in any case, land has become more valuable and some people who own lots that are larger than 1.5 acres but have only a single 150 foot frontage on a Town road would like to subdivide their land. Clearly they may do this if the new lot(s) created that don’t have frontage on the Town road are 3 acres or larger. But increasingly people are asking to create 1.5 acre lots that don’t have frontage on a Town road. When they come to the Town asking to do this, the CEO and the Planning Board Chair have great difficulty saying with certainty whether the private road or driveway that serves the parcel is or is not a public right of way.

The reason for this is that over the years the language related to back lots and rights of way has been amended in ways that allow exceptions and make the language unclear.

Chebeague has only 28 public roads – roads paid for and maintained by the Town. It has 55 other roads (one of these, Charleston Road is a private easement). But it is not accurate to describe all of these as “private rights of way.” In fact, the TOCI may have more public ROWs than it has public roads, since ROWs can be created

- Under section 425 (quoted above, and only adopted in 2003), where the landowner submits a road plan to the CEO. I know of one road approved in this way.
- By private deed recorded at the Cumberland County Registry of Deeds
- By prescriptive use.

Ways of Addressing/Clarifying these Related Issues

1. For new private roads/driveways the problem is one of enforcement:
   - There probably has been little or no enforcement of section 425.1 which requires plans for new private roads to be submitted to the CEO. It isn’t a very strong provision, and could be strengthened. But this is a question the Planning Board should answer.

2. For existing streets that are clearly not Town-maintained roads, one problem is an empirical one: whether they may be private ROWs approved for 1.5 acre lots.
   - Is there any information about who originally owned the property the road runs across and whether they ever allowed other private rights of way to be created that were registered at the Cumberland County Registry of Deeds? This is an empirical question and could require deed research on all of the Town’s non-Town roads.
• What would make a road “public” by “public prescriptive use”. Would this cover lots of roads or only a select few? This would require legal advice. But it would also require research on how the road has been used over some specific period of time.

• Would it be possible to “assume” that non-Town roads are unrecorded “private ROWs” unless the person proposing the new lot can show that they were approved or recorded.

3. For existing streets that are clearly not Town maintained, the other question is how much development are we willing to see occur along them and what does that mean for the nature of these roads?

• Would it be possible to require someone who wants a 1.5 acre lot to upgrade all or part of the road serving the house? The upgrade might be based on the number of 1.5 acre lots that could be created, using standards like Cumberland’s. Or it could involve permission from the CEO as in section 425.1. This would be a tough requirement.

• Would it make sense to leave it up to the Board of Adjustment and Appeals to deal with these cases as they come up. This is allowed in Section 403.2. [Problem with this: Section 110.167 defining a Variance does not allow variances on lot size to be granted.]

• Would it make sense to stop having any back lots and simply allow 1.5 acre lots anywhere on the island regardless of what kind of roads they are served by? This would at least implicitly assume that none of these private roads is long enough to have enough houses to require a stronger road.

• Would it make sense to ask the Selectmen if they would choose to have a policy on accepting private roads? This would at least put people who live on private roads on notice about where they stand.

It is worth remembering that the residents of Deer Point Road did go to the Cumberland Town Council asking that their road be assumed by the Town. The Council said no – the condition of the road was too poor. Deer Point Road may be at the extreme end of the spectrum.

A place and process based approach to an answer:

• The Comprehensive Planning Committee had trouble deciding how to classify the future land use of the area between North Road and the shore – whether it should be “rural” or something more developed, in part because of these lot size and road issues. In the end the committee recommended that the Town work with the residents of that area to develop a plan for how much development to allow in this area. This might create a forum for addressing some of the empirical issues of who owns and has rights to these roads.

• The Comp Plan also recommends that the Town adopt standards for private roads.

• The issue of back lots and roads has also come up in the Meeting House Road area, and might come up elsewhere, like Deer Point. Look at the map to see where the private roads are.