

Minutes of the TOCI Planning Board, Thursday October 18, 2012 at 7:15 at the Hall.

Present: Sam Birkett, Louise Doughty, Mabel Doughty, Charles Hall, Beth Howe

1. Minutes of the meeting of September 20, 2012.

Jane moved, seconded by Mabel to approve the minutes. Charles said that it was Chip who had said when roosters crow. Beth said she would make the change. Passed unanimously.

2. Draft letter to the Selectmen about a nuisance ordinance.

She handed out copies of the draft letter. She reminded the group that they had started trying to deal with the problems of externalities like the mining sound from Hope Island by modifying the Zoning Ordinance. That will also be discussed this evening. But when Beth asked MMA's Legal Services Department about some of the issues this raised, Richard Flewelling responded that "If the objective is to enforce external impact standards against all land uses, both regulated and otherwise unregulated, this is often by way of a freestanding nuisance-type ordinance." [Here] careful and explicit drafting is the key." This is not something that is in the jurisdiction of the Planning Board. So she had been asked to develop a letter to the Selectmen asking them to take up this issue.

Sam said she would like to see the issue of nuisance lighting mentioned more clearly. Jane said she would like us to convey to the Selectmen that we really want the Selectmen to do something about this problem. Louise said that the extraction noise from Hope Island has begun again. Beth said she would add the suggestions made and asked if a motion was necessary to approve the letter. The members said no.

3. Draft revision of Sect. 402: Animals of the Zoning Ordinance

Beth said she had used the minutes to reconstruct the changes the Planning Board approved at the last meeting. Do the members accept this as accurate. Does anyone want to make any more changes? She did suggest using "poultry" rather than "chickens" since turkeys have been raised here in recent years. That was agreed to after discussion about turkeys and guinea fowl.

Beth suggested that the inconsistency between restrictions on poultry and pigs and Sect. 402.3 about "Other Animals" which allows any species to be kept for "personal use and enjoyment" might be reduced if the sections on poultry and pigs be subsets of "Other Animals. This seemed to be accepted.

There was still disagreement in the group about the provision that roosters may be kept only on lots larger than two acres. Everyone agreed that a lot that size would not really attenuate the sound of the crowing for the neighbors. Jane said she thought that there should be a 100' setback or that roosters should not be allowed at all. Beth asked if the language should differentiate between commercial versus private keeping of chickens of chickens. Jane said she did not think that the Comprehensive Plan supported encouraging all kinds of businesses. She thought this would be one that should not be encouraged. Charles said that this is really more an issue of nuisance noise than of land use; and people should just be considerate of their neighbors

without regulations. Several people mentioned families on the island who do have roosters. Chip's lot is probably at the small end of all of them.

Jane moved to take out item 4.02.c. about roosters and lot size. She was seconded by Sam. On further discussion Jane realized that she had thought taking out the language on roosters would prohibit them, but Sam said it would allow them. Beth called for the vote and the motion passed 3-2.

[A check of the wording in the Zoning Ordinance indicates that Sec 104: Intent says " unless otherwise specified, it is the intent of this ordinance that any use not specifically allowed as a permitted use or special exception use is prohibited". Is keeping poultry a permitted or special exception use? If it is, the provision, as amended, above, would prohibit roosters unless they are kept for "personal use".]

Beth read out Sect. 402.6 on Pigs. Louise asked why the size of a "piggery" had been set at five pigs more than six months old. Beth said that is the Cumberland wording. Several people suggested that the number be reduced to two or three. There was a discussion of how many pigs someone on Chebeague would be likely to raise for their own consumption and even for friends. It was agreed to drop the definition of a "piggery" altogether.

4. Revision of Zoning Ordinance Sect xxxx Extracting, Moving and Filling of Earth Materials

Beth reminded the group that one of the reasons that it was difficult to require the Cacoulides to come to the Town for a permit for their breaking up of ledge into gravel is that the wording in our present ordinance is focused on the permitting of commercial gravel pits. So after the discussion two meetings ago about this issue, she had developed a draft of alternate language. The draft includes regulations covering extraction for use on the same parcel and commercial extraction for sale and transfer to another site. She pointed out that in the Shoreland Zoning moving of < 10 cu yards of earth is a permitted use in all districts except RP and RP/FP; but moving of > 10 cu yards of earth (an area 10' x 10' x 1' deep) requires a permit from the CEO in most districts and a review by the Planning Board in RP and RP/FP.

She read through the review process for extraction for use on the same parcel. Moving < 20 cu yards would require a permit from the CEO and >20 the permission of the Board of Appeals as a conditional use. The applicant would have to file an application describing the project. The permit granted would remain in effect as long as the construction of the building or for 6 months, renewable for an additional 6 months. But no applicant could be issued more than two permits in a two-year period.

Charles asked how someone like Wayne, who does many excavations a year would manage. Beth said the limitation would have to apply only for permits for the same parcel. Also Wayne often takes dirt from one project to use at another, replacing it later, so the requirement that the material remain on the same parcel may be difficult to make workable.

Several people were concerned about the borrow pits that have been created on properties on the island. Beth said there would be a provision in the draft requiring reclamation of the site.

There was an extended discussion about whether the amounts of earth in the draft made sense. The 10 cu yards which is referred to in Shoreland Zoning is only a 10' x 10' x 1' parcel. This is a small amount of material. The group tried to calculate the size of foundation excavations, but with no calculators or time to think clearly, the numbers came out improbably large. So it was agreed to ask Ron for realistic figures. *[A foundation for a modest house of 24' x 26', with a 6 foot cellar would be 8 yards x 8.66 yards = 69.33 square yards x 2 yards, or 138.66 cubic yards. This would mean that probably any foundation, driveway or septic system alone would require a permit and a project with all three might be in the range of 200 cubic yards.]*

On the other hand, the draft says that extraction of earth materials for sale and use on another site would have different regulations for excavation smaller and larger than 100 cubic yards. Excavations smaller than 100 cu yards in a period of one year would require a permit from the CEO. Would require a permit either from the Planning Board or the Board of Appeals. These projects would be subject to the procedures and standards that had been in the Cumberland Zoning Ordinance for gravel pits.

Louise asked why some of the standards that were applied to gravel pits were not applied to excavation of other kinds. She pointed out that the provisions related to noise, standing water, excavating within five feet of the seasonal high water table and control of stormwater runoff were all relevant to excavations of any size, whether or not they were gravel pits. Beth said she would make these apply to all extraction and moving of earth.

Sam (?) said she thought the regulations should regulate extraction in aquifer recharge areas more strict. Beth said this raises a broader issue that we have not discussed: whether to identify specific aquifer protection areas on Chebeague or any of the other islands.

Jane (?) asked whether the Town should be subject to these regulations when they work on the roads, especially if the work affects surrounding properties. Beth said that the Town can work out drainage easements with abutting property owners, and this mechanism would deal with some of these issues.

Beth said it was after 9:00 and that it was too late to begin on the draft revisions of site plan review. So the meeting was adjourned.

Respectfully submitted,

Beth Howe