

Thursday 28

**Minutes of the meeting of the TOCI Planning Board, Tuesday June 24, 2013  
at 7:15 at the Hall**

Present: Chip Corson, Sam Birkett, Mabel Doughty, Jane Frizzell, Charles Hall, Beth Howe (Chair)

Absent: Louise Doughty

Staff: Ron Tozier

Also present: Jay Corson

**1. Minutes**

Chip moved to approve the minutes of April 18, 2013. Seconded by Jane. Passed unanimously.

**2. Zoning Ordinance: Site Plan Review**

Beth said that the Board had reviewed all the site planning provisions of the Zoning Ordinance except the last few decision criteria. We should finish this.

Criteria H: Erosion Control was approved largely as written. There was discussion about whether terraced parking might not be relevant to Chebeague, but it was decided to leave it in.

Criterion I: Water Supply. No change

Criterion J: Sewage Disposal. No changes were made. Beth said that most of the decisions about collective septic systems would be made in the subdivision process.

Criterion K: Utilities. "must" in line 3 was changed to "should".

Criterion L: Water Protection. Beth's draft had suggested whether the 2000 gallons of water use that would trigger a more elaborate groundwater impact study should be lowered. The central issue was how much water does get used in a project that is large for Chebeague. Chip said that farmers might use that much water if they irrigated land. Beth asked how much water the Inn uses. Jay said that one standard is 50 gallons per unit/per day. Ron said that another standard is 25 gallons per person per day for residential use. Under the 25 gallon amount the Inn would only exceed 2000 gallons per day if it had 80 rooms, though at 50 gal/day it would reach 2000 gallons at about 40 rooms.. Chip suggested that we look for information on the web what different kinds of land uses use. [After the meeting Beth did some looking. Of course there are a lot of variables that affect use. Agricultural irrigation uses 40 % of all fresh water in the US. It may be that this use on Chebeague could exceed the 2000 gal/per day amount. Of all water use in the US, domestic use counts for only 8.5 percent of the total.]

Decision on this criterion was held off pending more information.

Criterion M: Water quality. Beth said she thought the most important part of section a. was the last sentence about harm "to human, animal, plant or aquatic life." Several people said that Pete Pellerin's application had shown that for fuel and chemicals, the State is the primary regulator on such things. It would be possible to add Criterion Z in the draft to this section to include the State's setback requirements for bulk storage.

Possible beefed up Criterion: Aquifer Protection. The aquifer protection provision in the current ordinance is not very effective because under Cumberland all of Chebeague was classified as an aquifer protection area, and there was never a process for evaluating the impact of development on the aquifer. Sam and Jane suggested that there could be specific language about the use of pesticides, herbicides and fertilizer. Beth said that this is probably dealt with better by a general Town ordinance rather than through zoning. Ron said that he thought that one issue that should be dealt with by a Town ordinance is the requirement to have septic systems inspected when properties are sold. Chip said that probably other towns or islands may have aquifer protection provisions and we could use them for ideas. Beth said that it sounded like people would be interested in exploring this issue further.

Criterion N: this was not changed.

Criterion O: Beth said that the state does have a process for mapping at least some archaeological resources, and a process for reviewing development proposals. This section was left the same.

Criterion O: Floodplain Management. Beth said this does come up as an issue on the island. It has all become more uncertain since FEMA is revising the floodplain maps. The current language was left as is.

Two criteria were in the State's model criteria that Cumberland did not adopt;

Criterion X: Shoreland relationship. Beth said that this seems more like a criterion for the subdivision ordinance since it deals with occupants of the development having access to the shore. The first sentence will likely be covered by any new aquifer protection language.

At the end of the list of criteria are a bunch of criteria that Cumberland had in its ordinance. Beth said that these mostly came from a handbook that State Planning did on "Good Neighbor" policies. Jane said that before considering these criteria, she would like to see that report. Beth said she would get it for the Board. So this section was deferred.

### **3. What will the Board work on during the Summer?**

Beth said that one option is not to meet until September unless there are site plans to review. Or she suggested that when the Board finishes with Site Plan Review it could focus on the Shoreland Zoning Provisions. These are set by the State Legislature and there have been some changes since we adopted the present language in 2007. Also there are some parts of the ordinance, such as timber harvesting, where towns are given several choices about how to deal with some issue. She also said that she thought it would be better to have the Shoreland Zoning provisions all together in a separate section of the ordinance, rather than having them distributed throughout the document by topic. Looking at the size of the draft, there was not much enthusiasm for this option.

Ron said that the people on Deer Point have been organizing themselves to go to the Selectmen to ask that something be done about the noise on Hope Island. The Selectmen are likely to refer this to the Planning Board. So we will need to meet on that. She said that she thought that the

noise is really a nuisance issue and really belongs in a nuisance ordinance rather than in the Zoning Ordinance. Ron said that it would be useful to make sure that developments, including excavation of land, be structured in the Zoning Ordinance so that people who want to do it must come to the Planning Board, which can then impose conditions specific to the particular project. Beth asked if he would prepare an outline of that idea. She had earlier done some more work on the excavation language in the ordinance. We could talk about that issue in July.

Ron said that he had had a discussion with David Hill about the Inn's use of the house across South Road from the Inn. Chip, Jay, Charles and Sam all said that the Inn is probably in violation of the Zoning Ordinance. Not only are they renting rooms in the house to their employees, but they are also renting out kayaks and bikes which means they are doing commercial business in a residential zone and should have to come to the Planning Board. Jay said they have placed their bike rack practically in his yard. Beth said that the rental of the rooms in the house is probably not illegal and read out the definition of a "commercial use" which excludes rental of houses. She asked if they are operating a general recreational equipment business for the island. Charles said they do not charge for the bikes and kayaks, but make them available only to their guests as part of the price of the room. Everyone agreed that if they did this from the Inn property which is commercially zoned, it would be ok. Beth said she didn't think that if it was done from a house in the residential zone that would meet the test of being a commercial use and Ron said he was not sure it would. There was argument back and forth on this point. Beth said that the arguing was not getting the Board closer to agreement. Ron said he wanted to do more research in the ordinance and by talking to MMA about whether this is a commercial use that should go to the Board of Appeals and to the Planning Board. He suggested to Beth that they work on this next week.

Respectfully submitted,

Beth Howe

**Sec. 412      Extraction of Earth Materials**

**412.1**

Top soil, rock, sand, gravel and similar earth materials may be removed from locations where permitted under the terms of this Ordinance only after the granting of a one year, annually renewable special permit for such operations as may be issued by the Board of Adjustment and Appeals and under such terms and conditions as may be approved and provided for by the Board and as provided for in this Ordinance.

**412.2      Procedure:**

- A.    The applicant shall present a site plan with detailed information of the proposed extraction operation as required under Section 206, Site Plan Review, and a written report describing the method of extraction, duration of the operation, traffic generation, measures to be taken to control erosion and stormwater runoff, and other information requested by the Board of Adjustment and Appeals.
- B.    The site plan, written report, and fee as required in Sec. 602.4 shall be submitted to the Code Enforcement Officer at least 30 days prior to the next available meeting date of the Board of Adjustment and Appeals, and shall be forwarded to the Planning Board for their review and advisory opinion.
- C.    After receipt of the advisory recommendations of the Planning Board and all other required materials, the Board of Adjustment and Appeals shall decide whether, and under what conditions, the proposed extraction operation may be permitted consistent with the provisions of Section 412.3, below:

**412.3      Standards:**

- A.    The operation shall be shielded from surrounding property by an adequate buffer area of not less than 200 feet from the top of the final grade to the property line, except that the Board of Adjustment and Appeals may reduce the buffer area from the minimum requirement of two hundred (200) feet to a minimum requirement of not less than one hundred (100) feet provided that any excavated property remaining will be left in a condition more useful for some future purpose conforming to the district requirements in which the excavation site is located.
- B.    An applicant may specifically apply as a part of his application for the excavation and removal of lands to the Board of

Adjustment and Appeals for waiver of the requirement of the 200 foot buffer strip when the protective barrier serves only to separate two existing gravel pits. The Board of Adjustment and Appeals may only grant a waiver from this requirement of the Ordinance if (1) the protective buffer zones exist only between two existing gravel pits, (2) the owner of the respective properties mutually and voluntarily consent to the removal of the buffer zone, and (3) the Board of Adjustment and Appeals find that it shall not have a detrimental effect upon adjoining properties.

- C. Specific plans shall be established to avoid hazards from excessive slopes and/or standing water. In no case may soils be removed or excavated to closer than within five (5) feet of the seasonal high water table as may be determined by a competent authority. Where an embankment must be left upon the completion of operations, it shall be at a slope of not steeper than one (1) foot vertical to three (3) feet horizontal, except that where the required buffer area has been reduced to 100 feet the slope of the edge of the excavation area shall not exceed one (1) foot vertical to four (4) feet horizontal.
- C. No standing water shall be allowed to remain longer than two consecutive calendar weeks unless specifically provided for by the Board of Adjustment and Appeals.
- E. In the case of any excavation to a depth of more than 20 feet below the surface there shall be constructed a substantial fence with suitable gates completely enclosing the property or area in which the excavation is located. No portion of such fence shall be located closer than forty feet to the edge of such excavation. However, this condition shall not apply in the case of an excavation or removal of lands adding a slope of one foot vertical to greater than 3 feet horizontal.
- F. No excavation shall be extended below the grade of adjacent streets unless a 200-foot buffer strip shall be provided from the edge of the right-of-way except in cases where a specific condition has been made with the consent of the Board of Adjustment and Appeals and other involved parties such as the Town of Chebeague Island Public Works Director and other property owners for the reconstruction of the right-of-way and street at a different level.
- G. Provision shall be made for the control of stormwater runoff to prevent on-site erosion, and to ensure that stormwater runoff

## Minutes of June Meeting

### 4. Revision of Zoning Ordinance Sect 412 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 1' 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 1' 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 more than 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

Sunday, June 16, 2013

Hi

It has been a long time since we met last, but I had next Thursday noted on my calendar. It was hard to remember where we were in the site plan review process. Initially I thought, with relief, that we had finished it. But a review of minutes indicates that we never got all the way through the criteria for approving plans. That should not be a major issue, unless we get sidetracked like we did at the initial discussion of the criteria. Once we finish the site plan review section, I will prepare a clean copy of what we agreed to for everyone to have. Let's not go over it again till we have more sections done and are ready to prepare something for Town Meeting.

I have attached the sections of the criteria that we didn't get to. But, of course, they are also in your draft of all the site plan provisions, if you can still find it.

Then we have a choice. Should we take the rest of the summer off and meet again in the fall? Or should we keep meeting and do something easy? I have worked through all the stuff on Shoreland Zoning, which the legislature has changed since we adopted our version in 2007. There are some new parts that we should discuss, and we should think about whether we want to make any of the provisions more strict than we have now. The third option is to go on to something really "meaty" like the number and locations of the zoning districts, or all the detailed regulations in section 400 like extraction of earth materials, back lots and road standards.

Also, before I left for Prague, Michelle told me that none of the current Planning Board members have taken their oath of office. I may have sent you something at that time, but I don't remember. We may be supposed to do it for each term we serve. You can just go in to the Town Office and she will swear you in.