Minutes of the TOCI Planning Board Thursday August 1, 2013 at 7:15 at the Hall

Members present: Sam Birkett, Chip Corson, Louise Doughty, Mabel Doughty, Jane Frizzell, Beth Howe (Chair)

Also present: Ron Tozier, CEO

1. Minutes of the meeting of June 20, 2013.
   Jane noted that the date of the meeting was wrong on the draft. It should have been Thursday June 21, 2013. Jane moved, seconded by Mabel to accept the minutes with that correction. Passed unanimously.

2. Public Hearing on an application for a Shoreland Zoning permit to have a business making mandalas at 23 Casco Bay Landing Road (Map I01 Lot 056).

   Linda presented what she wants to do. She wants to make mandalas -- a painting within a sacred circle -- in the existing shed at her house. She showed an example of a mandala. If the business grows, she hopes to hire other island people to assemble the mandalas at their houses. She may also conduct workshops, but not at her house, and may have an office as a spiritual adviser in Portland.

   She expects that most of the customers at her house will be people who come on the Casco Bay Line Boats and have 20 to 45 minutes on the island while the boat loads freight. They already come to Island Riches that is a little further up Casco Bay Landing Road. She does not expect many island people to come to her shop, since she is selling mandalas through the island gift shops. She hopes to expand the business to selling off the island.

   Jane said that her only concern is whether this increases the number of people wandering around on the island. Linda said that many of these people come anyway. Her neighbors do not have any issues with the idea of this business.

   Beth opened the public hearing to members of the public.

   Beverly Perkins said she thought the customers would have little impact and that the mandalas can be personalized to each customer’s spiritual interest.

   Since there were no other people who wanted to speak, Beth closed the public hearing.

   Beth went through the draft findings of fact with the members of the Board. There were no changes proposed to the draft, and no conditions to approval were suggested. Chip moved, seconded by Sam to accept the findings of fact. The motion was accepted unanimously. Chip moved, seconded by Sam to approve the application. Passed unanimously. (The findings of fact are appended to these minutes.)
Rod MacCormack asked Donna Damon whether the paper Street in front of the Carleton house had ever been accepted by the Town. Donna said it had not. A report was made on it but the Cumberland Council and the TOCI Selectmen have never acted on it. Beth said that since that set of paper streets is ready to go, they should be acted on.

3. Consideration of draft changes to the TOCI Zoning Ordinance, Section 412 on extracting, moving and filling of earth materials.

Beth said that the existing provision is oriented only to large, commercial gravel pits. Donna disagreed, saying that there was nothing explicit about it applying only to commercial operations. Ron agreed with this.

Ron said he thought the problem of commercial versus residential, and the issue of regulation of extraction on a lot for use on the same lot could be dealt with simply by taking out subsection 412.6 which defines exceptions to the rules. He thinks that any extraction of materials for sale should have some review that would allow for the setting of conditions such as the amount of noise allowed and the hours of operation. This would not stop the activity but would set parameters for it. State law limits noise to 65 decibels at the boundary of a property. But many kinds of noise do not rise to this level.

Beth said she hoped that Wayne Dyer would read the proposed revised language and give the Board his reaction.

Maricel Hahn said that a group of residents of Deer Point had asked the Board to explore the provisions related to excavation because of the excavation noise from Hope Island. She asked Ron about the status of the suit against the Cacoulides. Ron said he could not talk about this yet because the settlement was still being worked on and had not been approved by the court.

Beth said that it is the job to make rules that will apply to all residents of the Town. Carol White said that it is important to be clear about the goal for the revision of the ordinance: public safety? The environment? Then it is possible to show that these things were considered in the ordinance design.

Donna said this ordinance revision must go on the fast track and be ready for a Town Meeting this fall. That will be the test of what “the Town” wants.

These were ideas and suggestions generated by the group during the rest of the discussion:

- Donna: regulate any excavation on any parcel larger than a certain size. Require a master plan for these large lots.

- Ariette Scott: moratorium on extraction while the ordinance is being worked on.
• Carol: the State has a regulation that regulates any quarrying of rock that disturbs more than one acre of land. This is regulated by DEP.

• Carol: extraction of sand and gravel is not the same as mineral extraction. The issues that need to be thought about are noise, depth of excavation relative to the groundwater. Town of Washington and Bar Harbor have good detailed criteria for these.

• Wayne Dyer asked what the maximum he could move without a permit when doing excavation. 10 Cubic yards in the Shoreland Zone. No definition in section 412.

• Donna: for excavation, especially borrow pits, it is important to have provisions for restoration.

• Ariette: protection of the aquifer.

• Carol: noise is an issue. But it is not just how loud the noise from excavation is. It is also whether the noise is repetitive -- jackhammers or bells on backing trucks -- and how long it goes on.

• Regulation must be “reasonable” and balance need of the person doing the work with that of neighbors.

• Maricel asked what the Planning Board was planning to do about the issue. Beth said the Board will discuss the issue at its next meeting.

Respectfully submitted,

Beth Howe
Title: Extracting, Moving and Filling of Earth Materials

1. Extraction for Use on the Same Parcel
Any project involving the moving and filling of [greater than 50 cubic yards?] of earth materials including soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material, in which the material will be used on the same parcel requires a permit. [Shoreland Zone uses as threshold for regulation < and > 10 cu yards]

- Such projects include, but are not limited to, driveways, and regrading projects if the amount of earth materials involved is greater than the threshold amount. Building foundations and septic systems are not included.

Review:
- Proposals for moving of more than 50 cu yards, shall be reviewed by the Board of Appeals for a conditional use permit [would conditional use be appropriate? Should this review be by the CEO?]
- The applicant shall submit a plan of the site of the project and a written report describing the method of extraction, the duration of the operation, where the material will be stored, measures to be taken to control erosion and stormwater runoff and reclamation of the site at the end of the project.
- The process of extraction, moving and filling is subject to the provisions of Section 411 on erosion and sedimentation control [We should review these standards to see if they need to be changed]

Permit:
- If the project involves the construction of a building, the permit must be granted before or at the same time as the applicant is granted a building permit.
- If there will be no building, the permit must be granted before any work can begin.
- There shall be a permit fee, set by the Selectmen. [not very large, to cover review and inspections.]

Time frame:
- The permit will remain in effect as long as the construction of building [do we have a limit for this?]. If the project does not involve the construction of a building the permit will remain in effect for 6 (six) months per permit. If the work is not completed in that time, the permit can be renewed for an additional 6 (six) months.
- Hours of operation 8:00AM to 5:00PM weekdays. [too limited?]
- No applicant may be issues more than 2 (2) permits in a two year period.

2. Commercial Extraction for Sale and Transfer to Another Site.
Any commercial or private project involving the mining of [greater than 200 cubic yards] of minerals, including soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material, in which
the material being mined will be removed from the site and sold [or disposed of by barter?] shall require a permit.

Small Projects
Any project for excavation and sale or barter of less than 200 cubic yards of earth materials must obtain a permit from the CEO. The applicant must present a plan of the site explaining where the excavation will take place, what method will be used to do the extraction and process the resulting material, where it will be stored or taken, and how the site will be reclaimed.

Large Projects
Any operation that extracts more than two hundred (200) cubic yards of minerals within any twelve (12) month period from a single site to be sold [or disposed of by barter?] for removal to another site requires a permit. Minerals includes soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material. The permit must be issued by the Board of Appeals/Planning Board [which one?] which may impose such terms and conditions that it deems necessary. The permit is valid for 1 (one) year, and may be renewed by the Board on a yearly basis

A. The applicant shall present a plan of the site with detailed information about the proposed extraction operation 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, proposed reclamation of the site and other information requested by the Board of Adjustment and Appeals [Planning Board].

B. The site plan, written report, and fee shall be submitted to the Code Enforcement Officer at least 21 days prior to the next available meeting date of the Board of Adjustment and Appeals [the Planning Board?]

C. [the Planning Board] 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 for all excavations
I changed the wording in this section somewhat to make this process separate from and less complicated than the standard site plan approval process, which is what Cumberland required. But if this change is accepted, we must include provisions for notification of abutters/a newspaper and a public hearing

A. Noise from the operation must not exceed xxx decibels, measured at the property lines of the parcel.
B. 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.

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/Planning Board.

D. Provision shall be made for the control of stormwater runoff to prevent on-site erosion, and to ensure that stormwater runoff leaves the site at the same location it did before, and is not significantly increased.

E. Sufficient topsoil shall be retained on the site or otherwise provided sufficient to cover all disturbed areas with an average depth of not less than two (2) inches. All disturbed areas resulting from the excavation and removal of lands or soils shall be graded and sloped to conform to the provisions of this Ordinance, reloamed and seeded with grasses indigenous to the area and such trees as the Board of Adjustment and Appeals may require and otherwise restored to a natural condition. In the case of topsoil removal, the upper six inches of topsoil shall be stockpiled and restored to a depth of six (6) inches throughout the site.

OR Reclamation

* All disturbed areas resulting from the excavation and removal of earth shall be graded and sloped to look like a natural landscape. Topsoil shall be retained on the site or otherwise provided sufficient to cover all of the disturbed area to a depth of at least 3 (three) inches. The area then must be seeded with grass or planted in some other way that will hold the soil in place.

412.4 Additional standards for commercial gravel pits

A. The operation shall be shielded from surrounding property by an adequate buffer area of not less than 200 [does 200 feet make good sense?] feet from the top of the final grade to the property line, except that the Board of Adjustment and Appeals/Planning Board 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/Planning Board 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 will not have a detrimental effect upon adjoining properties.

C. Specific plans shall be established to avoid hazards from excessive slopes and/or standing water. 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.

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 roads 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/Planning Board 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 road at a different level.

I. Take out?? Loaded vehicles shall be suitably covered to prevent dust and contents from spilling or blowing from the load.

J. All access roads leading from the extraction site to public ways shall be treated with stone, calcium or other suitable materials to reduce mud and dust.

412.5 [I don’t know if this requirement for a surety bond is necessary or overkill] A surety bond shall be posted with the Town Treasurer by the applicant in an amount and form approved by the Board of Adjustment and Appeals/Planning Board with the advice of the Town Administrator sufficient to guarantee performance and conformity with the provisions of this Ordinance and approval of the special permit for the excavation and removal of lands.
412.6
The foregoing provisions shall not apply to any lawful use of land for the removal of sand or gravel and the quarrying of stone, existing at the time of adoption of this Ordinance provided, however (a) that no such existing operation shall expand closer to or within two hundred feet to any adjoining property line or to the line of any existing public way, (b) that no such existing operation which may be within two hundred feet to any such adjoining property line or the line of any existing public right-of-way shall be permitted to expand closer to such line or lines, and (c) existing restrictions as may have been previously provided for previous approvals shall continue in full force and effect, and (d) further provided the Board of Adjustment and Appeals shall have the authority to approve applications for the expansion of such existing pits or quarries into such areas, under the same terms and conditions as it may approve applications for new gravel pits and quarries for the excavation and removal of lands pursuant to the provisions of this ordinance.

412.6 Take Out
This subsection shall not apply to (a) extraction necessarily incidental to construction, alteration, excavation, or grading for which a building permit has been issued, (b) to extraction from one portion of a lot for use on another portion of the same lot, or contiguous lot of the same owner, or (c) removal of topsoil from a site that is less than one acre in area during a one-year period.

412.7
Violations of this section of the Ordinance shall be punishable by a fine as established by order of the Board of Selectmen. Each day such violations are permitted to continue to exist shall constitute a separate violation.
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’ x1’ 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 strictly. 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
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