Meeting of the TOCI Planning Board, Thursday August 22, 2013 at 7:15 at the Hall

Present: Chip Corson, Louise Doughty, Jane Frizzell and Beth Howe (Chair)
Absent: Sam Birkett, Mabel Doughty and Charles Hall.
Also present: Ron Tozier, CEO

1. Minutes of the meeting of August 1, 2013
   Louise moved, seconded by Jane that the minutes of the meeting of August 1 be accepted. Approved unanimously.

2. Revision of Section 412 of the TOCI Zoning Ordinance
   Beth went over the questions about the direction of this effort that she had culled from past discussions. Chip suggested following Carol White’s suggestion from the previous meeting that we start by defining the goals we are trying to achieve. Beth said that the reason the issue is before us is regulation of noise. Chip said we should not just focus on issues with Hope Island. The revision must apply to everyone in the Town. Beth asked for other goals. Someone suggested protecting the groundwater. Jane said one goal was to reduce negative impacts on neighbors. Beth suggested aesthetics and protecting against loss of property value but then said that these are really part of impact on neighbors. She also suggested that there is a balancing goal: to allow people on the island to use the earth resources here, particularly gravel, rather than having to bring them from the mainland. Chip said that we should also have as a goal making the process as simple as possible, without excess regulation. Louise said that Chebeague is not as simple as it used to be and regulation may be necessary. Beth added that the amount of regulation could vary with the scale of the excavation. Jane said that one aspect of negative impacts on neighbors is reduction of property values.

In summary the goals for this ordinance revision are:
   - Allowing earth resources on the islands to be used
   - Protecting the groundwater of the islands
   - Protecting neighbors from unreasonable negative impacts such as noise, and loss of property value
   - Keeping the necessary regulatory process simple

Beth said that she had looked at the mining ordinance from the Town of Washington where granite quarrying has revived in recent years. It may be more complicated than what we need, but it could also serve as a model for us to think about and use in part. It does not require some of the things that we may want. For example, it allows excavation of material used for personal purposes. But the idea of spelling out the limits of the ordinance at the beginning is useful. They do not require a permit for any excavation smaller than 20,000 square feet of surface area or less than 1,000 cubic yards of material.

Currently the definition of “mineral extraction” (Sect 110.99) is any operation that within any 12 month period removes more than 100 cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat or other like material from its natural location and transports it away from the extraction site.
Beth said that in her draft revisions she had included extraction, regardless of whether the material is transported away or used on the site. She excluded house foundations, septic systems, but not driveways. Do these policies make sense. Town of Washington excludes extraction that is used on the same site. In addition, driveways are already subject to being permitted by the CEO?
Chip suggested talking with Wayne about what would be reasonable from his point of view. Beth said she could also talk with someone at the Town of Washington in more general terms about what prompted their ordinance and how it has worked.

Ron said that for a normal house of about 3,000 square foot house with a 6 foot basement, the house alone would require moving about 1,200 cubic yards of material. Add the septic system and you are talking about 2,000 to 3,000. So an excavation of 1,000 cubic yards would be a reasonable general lower limit for requiring permits. He didn’t think that requiring an excavation permit for driveways would be necessary, since a large road would be expensive to build, and few people would do it. There could simply be a question on the driveway application about an estimate of the amount of earth to be moved for the road. He recommended that excavation “incidental to construction or landscaping” be covered in the building permit and road construction application that are used by the CEO.

He said that some projects the Board has looked at have involved considerably more than 1,000 cubic yards. The bank strengthening at Hamilton Beach is an example. It did create a lot of disruption for the neighbors from bringing in the large amounts of stone required, to building a road down the bank.

Chip asked about whether starting up or enlarging a farm would require a permit. The Comprehensive Plan says the Town wants to encourage this kind of activity, but regulation would discourage it. The Board struggled with this. Ron said that it obviously is different from mining earth materials. Beth asked where the difference lay. Is it whether the material is sold and moved to another site? What about covering quarrying material for your own use? Is the issue whether the material is soil or rock? Is it something about the process used to do the work?

Ron said that borrow pits usually involve people excavating material to use on some other part of their lot, like gravel for a driveway. The issue here might be the process and machines used for the digging. But what is more obvious is the need to require reclamation of the site after the borrowing. He doesn’t think it matters whether some of the material is sold or bartered and moved elsewhere. The issue is the impact on the neighbors of doing the excavation.

Beth suggested that we prohibit all mineral exploration and extraction in the shoreland zone; and that the threshold for excavating and moving earth in the shoreland zone remain at the 10 cubic yards allowed in the Shoreland Zoning Regulations. This 10 cubic yards does not apply to extraction or earth moving incidental to construction of a permitted building.
Beth asked whether the permitting that would require a public hearing should be done by the Planning Board or the Board of Appeals. Ron said that he thought it would work better for the Planning Board to do it. Their reviews usually deal with issues that such an ordinance would raise. The Board of Appeals has a narrower scope, looking at things like appeals from decisions of the CEO.

Beth said she thought this discussion had provided enough ideas and discussion for her to prepare a draft ordinance, based partly on the Town of Washington’s, for discussion at a future meeting. Ron suggested having a table like the shoreland zoning one for what needs to be reviewed by whom. Also a chart for the process steps and application requirements would be useful.

Respectfully submitted,

Beth Howe
August 15, 2013

Memo to: TOCI Planning Board
From Beth Howe
Re: Extraction of Earth Materials

Since extraction of earth materials has become a hot topic, we should spend next week's meeting really thinking about how much to change what exists now. I expect that at least some of the people who came to the August 1 meeting will be there again. But I want the Board to really discuss the issue among itself and try to come to some conclusions, rather than just having another meeting like the last one. We can tell them that if they want something for a fall Town Meeting, we have to have an opportunity to work on it as a group.

I have appended the current wording, so you can easily see what is in now.

At the last meeting Carol suggested that we clearly define what goal(s) we are trying to meet with the revision. As you can see from the recent minutes and my draft revision, the issues that have been mentioned as things that might be dealt with in this section are:

Noise, amount and nature
The aquifer/depth to groundwater/aquifer recharge areas
Reclamation/restoration of sites (aesthetics and usability in the future?)
Definition of amount of earth being moved that triggers the need for a permit.
Borrow pits
Covering both commercial extraction and private/residential?
Would Town extraction be covered?
If there are excavation permits, who would give them out and what would be the process?
Conditional use permits
And a variety of smaller items in my draft revision

Out of this miscellaneous list, what goals are we trying to achieve?

Ron suggested at the last meeting that we just take out 412.6 and that might deal with the issues that are being raised. Would this be enough?

Is my draft revision too complicated? What would it do to people like Wayne and to people just building houses?

I'm sure this does not exhaust the relevant questions we should be asking, so bring more to the meeting.