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Minutes
Town of Waldoboro Planning Board
Special Meeting on Revisions to Land Use Ordinance
July 22, 2009

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Roll Call

The meeting was called to order by chairman Chuck Campbell at 7:05 p.m in the gymnasium at Miller School. Other members present were Carlo Bianchi, Chuck Flint, Ed Karkow, and JoAnn Myers. Director of Planning and Development Patrick Wright was present. Lincoln County Planner Bob Faunce was facilitator. The audience of 200-250 people included Town Manager William Post, Selectmen Bob Butler, Becky Maxwell and Ted Wooster; Andy Benore, John Black, Dennis Blanchet, Sam Cohen, Terry Dailey, George Enman, Carleton Johnson, Leroy Jones, David Kristiansen, Al McKay, Janet McMahon, Jeff McNelly, Blair May, Doug Meservey, Ron Miller, John Morris, Robert Morse, Liz Petruska, Bill Tarvainen, David Trahan, Bo Yerxa, Charlie Young, Wayne Brown, Emy Kanewske, and Dick Noble. LaMarr Clannon of Nonpoint Education for Municipal Officers was guest speaker.

1. Public Information Session on Shoreland Zoning Map Amendments

1.1 Introduction of Shoreland Zone Regulations – Patrick Wright

Wright welcomed the audience and the chance to get public input on proposed changes to the shoreland zoning ordinance – some mandated by the State. He recognized that this is a controversial topic, and asked that people in the room tonight treat each other respectfully.

Wright said that the Planning Board is in charge of revising the Land Use Ordinance. In 2006 the State of Maine created a rule that some wetlands over 10 acres need to be zoned Resource Protection. The Planning Board recommends other changes beyond the state minimums to shoreland zoning. Tonight we will discuss whether the currently proposed changes are right for Waldoboro. A formal public hearing will be scheduled at a later date. The Planning Board will make a recommendation to the Selectmen regarding proposed changes to the Shoreland Zoning map, and the Selectmen will decide whether to place this on the warrant for vote by townspeople.

Wright introduced LaMarr Clannon of Nonpoint Education for Municipal Officials, who is here to give a presentation on the connection between buffers and water quality.

1.2 Presentation on the Connection between Buffers and Water Quality – LaMarr Clannon

Nonpoint Education for Municipal Officials (NEMO) is a nonprofit organization operating in 37 states including Maine. It is funded primarily by the federal Environmental Protection Administration (EPA) through the Maine Dept. of Environmental Protection.

Point-source pollution is pollution with a direct, visible cause, such as smoke or effluent from a factory. Nonpoint-source pollution is general runoff, for example from a farm, subdivision, road or highway. It may contain lawn fertilizer, gasoline, bacteria, sediment, and other pollutants whose source is hard to identify. How we change the land affects the composition of runoff. Development of land increases runoff and increases the contribution of urban residue in the runoff water. Global warming will bring bigger rain events. Clannon stated that roadside ditches and culverts are 35% undersized for future runoff.

Components of runoff include bacteria, sediment, increased temperature, nutrients (nitrogen, phosphorus), petroleum derivatives, pesticides and herbicides, and heavy metals like mercury from atmospheric fallout from factories. When warm runoff enters cold-water streams, fish evolved for cold water die. Excess nitrogen and phosphorus cause algal blooms in lakes. The algae die, decompose, sink to the bottom, and use up the oxygen in the bottom water. Then the cycle begins all over again. Petroleum derivatives from leaking vehicles cause cancer in fish and humans. Pesticides and herbicides may operate as hormone imitators. Sperm counts worldwide are going down. Animals have difficulty reproducing. Heavy metals like mercury bio-accumulate in the food chain. Pregnant women and children should no longer eat striped bass, and men should eat stripers only four times a year.

Sediment is a nonpoint-source pollutant. Increased impervious area (roofs and paved roads) increases the percentage of rainfall that runs off into streams rather than sinking into the soil. Other pollutants adhere to sediment particles and are carried into streams and lakes, ultimately to the ocean.

Growth is a problem for Maine. She showed a slide giving the increase in housing units per acre by year in Maine. More land is used per person with new development. More than one-quarter of all development has occurred in the fifteen-year period 1982 – 1997.

Clannon lives in Litchfield, a rural agricultural community with a minimum lot size of 2 acres. When a two-acre lot is developed, 0.21 acres becomes impervious to rain water. This is 10% of the lot. With 8 – 10% impervious area, there is more erosion. The shape of the stream channels changes. With increased development comes increase in velocity of stream runoff, with huge amounts of downcutting and back-cutting of the stream banks and bed. If a town wants to preserve rural character, it would have to impose a 25-acre minimum lot size.

In an experiment in a Canadian lake, scientists stretched an impermeable membrane across the lake dividing the lake in two. Half the lake was enriched with 10 parts per billion (ppb) of phosphorus, and the other half with 20 ppb of phosphorus. The water with the higher concentration of phosphorus grew algae and became opaque. You can see the difference in aerial photos. Study results announced just last week link algae in water with Lou Gehrig disease, Alzheimer's and Parkinson's disease. Toxic algal blooms cause liver disease.

At this point in the presentation, facilitator Bob Faunce intervened to quiet audience members. He told the audience that if they want clean water and want to keep up their property values, they need

to hear what the speaker is saying. Clannon asked for a show of hands whether the audience wants to see the data she has. Most of the audience did not want to see the data. A man said, "We understand that pollution is caused by people." Faunce suggested that Clannon could put the data on the Town's web site. She ended her presentation at 7:35 p.m.

1.3 Description of Proposed Changes to Shoreland Zoning Map

At 7:37 p.m Patrick Wright thanked Clannon for her presentation, and attempted to present a full description of the proposed changes to the shoreland zoning map. He read a definition of "shoreland". Land within 250 feet horizontal distance of the normal high water mark of a pond, river, saltwater body, or the upland edge of a coastal or freshwater nonforested wetland, and land within 75 feet of the normal high water line of a stream, is subject to certain regulations mandated by State law. Within the shoreland zone there are six land use districts (see p. 7-2 of the 2008 Land Use Ordinance): Commercial Fisheries/Maritime Activities, General Development, Limited Commercial, Limited Residential, Stream Protection, and Resource Protection.

The State requires that the 250' strip around any wetland designated high or medium value for wading birds and wildlife be designated Resource Protection. The State has made these designations of high and medium value wetlands. The Town is required to implement them. The Waldoboro Planning Board has proposed to go beyond the State minimum requirements and recommends that all land within 250 feet of the normal high water mark of any wetland over 10 acres, most of the freshwater Medomak river, and Great Ponds in Waldoboro that contain a high to moderate value wetland be designated Resource Protection, except for land "currently developed". "Currently developed" is defined as the presence of two structures within 500 feet of each other within the 250-foot buffer. The setback for land in Limited Residential is 100 feet from the water or wetland.

Wright sent a memo dated July 8, 2009, to roughly 500 landowners whose land would be affected by the proposed change. On the back of the memo was a summary of the implications of a property being placed in Resource Protection. It addresses regulations governing agricultural uses, timber harvesting, clearing of vegetation for activities other than timber harvesting, and installation of "essential services". In the Resource Protection District, all new principal and accessory structures must be set back 250' from the water or wetland, except that the Planning Board may approve a permit for a single-family residence in the RP District if the applicant can demonstrate that there is no other location on the property where the structure can be built, and meet other stated requirements. New roads and driveways are prohibited in a Resource Protection District except to provide access to permitted uses, or as approved by the Planning Board.

The process is that the Planning Board will take public comment tonight, set a date for a formal public hearing on the proposed shoreland zoning changes, and submit proposed changes to the Selectmen. The Selectmen will decide whether to place the proposed changes on the warrant for Town vote.

Wright's presentation was interrupted by frequent questions from the audience. He went through a slideshow summarizing the proposed changes, highlighting the state minimums, and where the Planning Board had proposed to go beyond. This slideshow mirrored the text on a handout made available at this meeting. (A copy of handout is included with final minutes). Wright began to project maps of the proposal on the screen, but yielded to the growing number of audience questions and comments, ending his presentation at 7:45 p.m to allow for public comment and questions. Members of the Planning Board were asked to identify themselves. All members of the Planning

Board were present except for Abden Simmons, chairman of the Shellfish Conservation Committee. A public comment period followed.

2. Citizen Comments and Questions

(Not a transcript) - Paraphrased

State Senator David Trahan: I appreciate the work of the Planning Board, but do not agree with what it has done with shoreland zoning. The intent of legislation on Resource Protection was to limit this to special areas. I have been working with the Department of Marine Resources and the Department of Environmental Protection to clean up polluted areas. It is a collaborative process that has been greatly helped by Medomak Valley Land Trust. The Planning Board's recommendations have angered the very landowners who we need to work in cooperation with. Changing the designation Resource Protection from a few special areas to a wider area of protection will halt development. Fieldcrest Nursing Home has just been purchased. If Fieldcrest's land is in a Resource Protection area, what kind of message does this send? Some landowners care just as much about their land as the Planning Board does.

David Kristiansen: Changing State recommendations without a scientific basis is just as bad as two-acre zoning. The town of Waldoboro is struggling economically. My house is for sale. I will go to the Selectmen to ask for my property taxes to be reduced. Assessed valuations of all houses in Waldoboro are 15% - 20% too high. We are all interested in saving the environment. There is no work in town. Both my sons had to move away to find work.

Sam Cohen: I am a Waldoboro taxpayer and a person whose land is affected by the proposed shoreland zoning changes. Several people have asked me to speak in opposition at tonight's meeting. Question: *I ask the Planning Board why it felt it necessary to go beyond what the State recommends for Resource Protection.*

Planning Board chairman Chuck Campbell: I see that the Planning Board may have made a mistake. It is good to see so many people here. It is nice to have public input. The Planning Board made the recommendation it did because we felt that the most protection we could provide would be best.

Cohen: Question: *Would you provide us with the information on which you based your recommendation?*

Campbell: It is not in writing.

Cohen: I ask Patrick Wright what regulatory approaches there are.

Wright: Putting a 250' buffer around all wetlands over 10 acres may be using a blunt instrument. There may be a combination of regulatory and non-regulatory provisions that would accomplish much the same result.

Cohen: Question: *At the March 12, 2008 Planning Board meeting the minutes say (p. 3) that the decision not to change the shoreland zoning designation of the first 250 feet back from the salt-water shoreline from Limited Residential to Resource Protection was "for political reasons". Why?*

Campbell: I am at a loss how to answer, Sam. The question came up of placing the first 250 feet back from the whole Medomak River in Resource Protection, and we felt this would never fly.

Cohen, to audience: Thank you for coming to this meeting. Your opinions have been received by the Planning Board.

Emy Kanewske: I have a complaint about the preference of wildlife over liberty. With all of what has gone on recently, at all levels, I am coming to distrust anything government does.

Rich Connolly: I have a financial issue. I have five children. I own land with 2,000 feet bordering a brook. Fifteen acres of land is being taken away from me. I pay taxes on it. What is the reason?

Jeff McNelly: I know LaMarr Clannon. She does great work. Patrick Wright said the Planning Board was going to explain the reason behind the proposed shoreland zoning change. High-value and medium-value wetlands are required to be in Resource Protection. Properties abutting wetlands not designated high or medium value should not be in Resource Protection. I ask for a 75-foot setback from these (lower value) wetlands. We live on Goshen Road. People there care about the land. Question - *I'm curious who makes the decision on what goes to townspeople for vote.*

Wright: The Selectmen make the decision whether to include a proposed article on the warrant.

McNelly: What other land is excluded from rezoning? What about land owned by the Land Trust? At the June 24 Planning Board meeting someone asked how many properties would be placed under Resource Protection that are not now in RP you answered- "about 25". Question - *What dialog have Planning Board members had with Selectmen over the past 16 months?*

Planning Board member Chuck Flint: We have no dialog with the Selectmen until we have a complete ordinance revision to submit for their review.

McNelly: I have experience running a State-wide water quality monitoring program. You have to have the support of the citizenry. If you alienate those people, you have a bad situation. The Planning Board needs to figure out what is appropriate and move forward in a positive manner.

Doug Meservey: I live on Old Augusta Road near the Medomak River. A tributary to the river and associated wetland runs along the back of my property. I agree that we need to be good stewards of land. Private ownership of land is a basic liberty in our country. This proposed regulation goes beyond what's good for the land. It is a taking of private land without compensation. When a town or the State takes our land by regulation, they must pay for it. The State is imposing this on towns by upgrading the value of some wetlands. Some towns have gone back to the State to question whether the State's zoning meets State criteria. Question - *Do we know what this process is?*

Patrick Wright: I spoke with DEP today. They will review any property asserted not to contain high or medium value wetland.

Dick Noble: We own 25 acres on the river. I will read you two definitions from the dictionary. (He reads text.) They both define socialism. There used to be a 75-foot setback of structures from the river. We love the river. We would like to be able to build a small cabin within sight of the river. I think a 250-foot setback is extreme.

Unknown Man: My wife and I own 160 acres behind Medomak Valley High School. We have had more rainfall this year than in many, many years. Question - *How do you define the high water mark of a stream or the upland edge of a wetland?*

Wright: The Town's shoreland zoning maps show delineation of the wetland edge based on 2004 aerial photography. Aerial photography always yields to on-site investigation. To get an accurate delineation, there are two factors: soil type and vegetation type. In some cases this is easily identifiable, but if there is a question, you may need an expert from the DEP or a professional Wetlands Delineator. I am not an expert on wetland delineation.

Unknown Man: Who will pay for that?

Planning Board chairman Campbell: The wetlands are not being delineated based on this year's rainfall, but on data from two or three years ago.

Lincoln County Planner Faunce: You can identify wetlands by their distinctive soil type. Soils take many years to change; it doesn't happen overnight. You can still distinguish a wetland soil from an upland soil even in a wet year.

Terry Dailey: I am from Auburn. My family has 80 acres of pristine land in Waldoboro that has been in the family for generations. I plan to build a house there. We put 60 acres in a permanent conservation easement several years ago. No one should take this land away from me. The Planning Board is going to make a recommendation to the Selectmen. The accepted code of conduct says that if something you are doing isn't right, don't do it. I recommend that you not recommend these proposed changes.

Robert Morse: I run Atlantic Laboratories on Cross Street with frontage on the Medomak River. I am totally opposed to what you are doing. This rezoning is a taking without compensation. We will have no rights left. I am giving Bob Faunce a copy of material from a land use rights organization. I intend to bring a man to town to present a positive plan. You are implementing Agenda 21 Section 18. I am not a polluter. If you don't like what I am doing, come and talk to me. Don't take my property.

Blair May: I am a property owner on Medomak Pond. I have owned the land for 25 years. I am offended that you think you can take care of my property better than I can. I am offended when people come onto my property without my permission to re-assess it.

George Enman: I live on Dutch Neck. Question - *I ask the Planning Board, have you talked with anybody before implementing these changes?*

Planning Board member JoAnn Myers: The Planning Board meets twice a month. All meetings are open to the public. Sending a notice to all of you whose property may be affected is the best way to get the input we need to hear all the time. You are upset and angry. No one on the Planning Board is trying to make things tough for residents of Waldoboro. We are always trying to make the land use ordinance better. This shoreland zoning revision is a huge proposal. We tried to get people together to talk about the proposed changes.

Enman: Why didn't you do your homework and talk to some people?

Wayne Brown, of Nobleboro: I heard that you wanted to control growth, is that right?

Planning Board members: *No.*

Brown: If we start strangling our younger generation we will drive young people away. The plan is taking more of what I own than I am willing to give. This is a fine area. There are many trails on our land that people like to use. Because of this proposal, we are thinking of withholding the privilege of informal public access.

Bill Tarvainen: I own a camp on Hendrickson Pond [Havener Pond]. The lot has 200' of frontage and no water view. I can't trim the bushes. The setback from the water was 75'. The setback was changed to 100 feet before I could build a porch on my camp. Now the porch has to be on the back with a view of the outhouse. I would expect the Planning Board to try to defend property rights in Waldoboro.

Ron Miller: I'm from Dutch Neck. I didn't get a notice of this meeting. I own land on Peter's Pond. I was told my land is already in Resource Protection. Question - *I want the Planning Board to explain to me why you would change to more stringent rules.*

Planning Board chairman Campbell: Are you asking if we have any documentation of pollution to a specific pond?

Miller: *No, I want to know what part of the current setback isn't working.*

Campbell: I think we all agree that pollution is an issue.

Miller: We all know why you exempted the salt water frontage from Resource Protection. You don't want to reduce property values, so you can get more tax money.

Jim Masterson: I live in St. George. The DEP took 43 of my acres. My granddaughter lives in Waldoboro. I had 50 acres. I can only give her seven acres. I am not being compensated. I have 25 acres on Little Sidensparker Pond. Why do I have to stop pollution but people on salt water don't have to? We need to defend our liberties, for the sake of our kids, and for the sake of our jobs. We have to stop this kind of stuff. This is America. They cannot take your land.

Moderator Faunce: It is 8:40 p.m., this concludes the workshop. Thank you very much for your participation. It is time to conclude the public discussion part of the meeting.

At this point in the meeting, much of the crowd began speaking among themselves, and getting up to leave the room. Before the Chairman moved to the next order of business, Dennis Blanchet, and several other community members approached the podium, and stated loudly that the board needed to follow the agenda.

Chairman Campbell stated that the only vote on tonight's agenda was whether to hold a public hearing. He explained that tonight's meeting was not the public hearing, but an informational session, where the public was invited to either vent their frustrations, or show their support for the proposal. Dennis Blanchet said that he understood that the agenda was that the Planning Board was going to vote to move this forward, or whether this was going to end now. Blanchet asked everyone in the audience to sit down and stay for the rest of the meeting. Campbell welcomed them to do so.

3. Vote to Cancel The Proposed Shoreland Zoning Amendments

Carlo Bianchi made a motion, which began with "to cancel the proposed land use ordinance and..." the exact language beyond that is unclear because there was applause and an exchange of dialogue

between members of the board and the audience. Discussion ensued without the motion being seconded.

Campbell said that if we do not take any action we will be left with the State-mandated changes to shoreland zoning. Wright said that the deadline for adoption of the State changes to shoreland zoning was July 2009. The town needs to establish a Resource Protection buffer around all high and medium value wetlands. He said that he would set aside the week of August 10 to work with landowners, and could meet with them about whether their property touches one of these high to moderate value wetlands.

Blanchet said that if the Town does nothing, there is no penalty, and that the State has to ask the Town officials to *enforce* the zoning. Faunce replied that the State has jurisdiction and administers shoreland zoning. Waldoboro has its own ordinance, as well. He continued to say that when it comes to the high and medium value wetlands, the State will enforce restrictions on land uses within the Resource Protection zone. Further, he said that if the town does not act, you will be dealing with the DEP, not Patrick Wright and the Planning Board. There was heated exchange between Faunce, Blanchet, Robert Morse, and Jeff McNelly about the interpretation of the statute relevant to shoreland zoning and its enforcement.

Blanchet asked how many towns have adopted the State mandate. He said that the statute reads that unless a certain number of towns sign on, the Resource Protection provision would not apply. He read from Title 38 section 438-B, which pertains to timber harvesting activities. He said that if a certain number of towns did not “sign onto” the Resource Protection provision, then it would not go into effect. He said that the state “needs Waldoboro”. Wright corrected Blanchet, saying that the section he was reading did not pertain to Resource Protection, but a different provision of Shoreland Zoning which has already been adopted by the town. He went on further to say that we already comply with the State requirements, except for setting high and moderate value wetlands in Resource Protection. The setback on these wetlands will become 250’, not 100’, whether the town does it, or the state does.

Jeff McNelly approached the podium and said that we need to have a public hearing. He said that we need to talk to the State, tell them it is not appropriate for the State to impose these regulations upon the town. He said that as a town, we can go to a 75’ setback for wetlands that are not high or moderate value. He said to the board that if they didn’t do that, there would be trouble.

Chairman Campbell said that there was a motion on the floor, and asked Bianchi to restate his original motion. Bianchi said, “I move not to hold a public hearing on the land use ordinance amendments until we can get things settled”. There were comments from the audience that this was not the original motion, and other comments that the board should cancel the entire effort. Chairman Campbell said “if we do not at least address the state minimums, we are going to have them, whether we want it or not.” Wright went on to re-iterate that if the town did not adopt the high to moderate value wetlands as resource protection, then the state would start the process of imposing the ordinance on the town.

Wright read the State statute that is pertinent to state action if the town does not act. Title 38 Section 438-A subsection 4. Failure to adopt ordinances (he reads): “If the commissioner determines, after notice to a municipality, that the municipality has failed to adopt ordinances as required under this article or that an ordinance that the municipality has adopted does not satisfy the requirements and purposes under this article, and that the commissioner is unable to make the ordinance consistent with the minimum guidelines by the imposition of conditions, as set forth in

subsection 3, then the commissioner shall request and the board may adopt, acting in accordance with Title 5, chapter 375, subchapter II, suitable ordinances, or suitable provisions of ordinances, on behalf of the municipality.”

Chairman Campbell then recognized that there was a motion on the floor, that had not been seconded, and that “to the best of my understanding, the motion is to cancel the proposed land use amendments and continue to work on them.” Campbell waited for comment from the floor and the board, but there was none. Myers seconded the motion. The Planning Board voted unanimously to cancel the proposed land use amendments and to continue work on them.

4. Minutes of June 24, 2009

On motion of Myers/Karkow, the Board voted unanimously to approve the minutes of June 24 as distributed.

Adjournment: The meeting was adjourned at 8:57 p.m.

Charles Campbell , Chairman

Carlo P. Bianchi

Charles Flint

Edward Karkow

Susan S. R. Alexander

JoAnn Myers

WALDOBORO PLANNING BOARD