

Draft 8/27/09, minor PW changes 8/31/09.

Minutes  
Town of Waldoboro Planning Board  
Special Meeting on Revisions to Land Use Ordinance  
August 26, 2009

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Roll Call

The meeting was called to order by chairman Chuck Campbell at 7:05 p.m. Other members present were Carlo Bianchi, Chuck Flint, Ed Karkow, JoAnn Myers and Jody Perry. Code Enforcement Officer Patrick Wright was present. The audience included: Deborah M. Bellows, Andrew Benore, John Black, Dennis Blanchet, Jacqueline Blanchet, Bill Blodgett, Carol Blodgett, Robert Boynton, Dan Brinkler, Arthur Creamer, William Dail, Evangeline Dudley, Henry O. Dudley, Jr., George Enman, Ken Fowler, Craig Lewis, Mary Logue, Carole MacDonald, Steven McClure, Jeffrey McNelly, John Maguire, Yvonne Mickles, Ronald L. Miller, Richard Mogel, Shirley Mogel, Richard D. Moran, Richard T. Moran, Robert L. Morin, Robert Morse, Diane S. Murray, John and Marion Osier, Andrew Roberts, Michael Robitaille, Kathy Schofield, Russell Schofield, Gordon Webster, H. Louisa Winchenbach, and Thomas Winchenbach, Jr.,

1. Minutes of August 12, 2009

On motion of Myers/Karkow, the Board voted 5 – 0 – 1, Bianchi abstaining, to approve the minutes of August 12 as distributed.

2. Citizen Comments, Items not on Agenda – none

3. Review Calendar for Ordinance Amendments

Code Enforcement Officer Wright gave out a sheet giving deadlines by which certain activities must take place in order to place land use ordinance revisions on the warrant for town vote. The only amendment that has been approved for recommendation to the Selectmen is for small wind energy systems. In order to appear on the November ballot, a public hearing needs to be scheduled for Thursday Sept. 10. On motion of Myers/Karkow, the Board voted 6 – 0 to set Thursday Sept. 10 as the date for a public hearing on specific performance standards for small wind energy systems. Wright said it is too late to get shoreland zoning ordinance revisions onto the November ballot.

4. Shoreland Zoning: Public Comment; Recommendation for Meeting State Minimum Setbacks

A. Public Comment

There was public comment on shoreland zoning changes from 7:10 p.m. to 8:40 p.m. Most speakers were opposed to extending Resource Protection to wetlands rated low value by the State. Some were opposed to adopting any State shoreland zoning regulations, and others questioned whether the State has the authority to require such adoption.

Wright read aloud his August 20 memo to the Planning Board summarizing his shoreland zoning recommendations. He recommends that the Planning Board recommend adoption of “the state minimums in regard to the updated “High to Moderate” value wetlands, and go no further than these state minimums. MRSA Title 38 § 438-A requires the Maine Board of Environmental Protection to adopt and amend guidelines that accomplish the goals of the statute every four years. These “guidelines” are known as Ch. 1000 of the Department of Environmental Protection (DEP) regulations. If the town does not adopt shoreland zoning provisions that are at least as restrictive as these guidelines, DEP may impose these regulations upon the town, according to statute. Some 55 towns in Maine have had this imposed upon them.”

Wright noted that two wetlands on the current Waldoboro shoreland zoning map do not appear to be 10 acres in size. He recommends that these be removed from the proposed revised shoreland zoning map because they are inconsistent with the ordinance text.

Wright gave out copies of a Waldoboro shoreland zoning map that outlines in red the locations of high- to moderate-value wetlands as delineated by Maine Dept. of Inland Fisheries and Wildlife in 2008. These are to be designated Resource Protection, with a 250-foot setback. He proposes to hold an informational session where an enlarged copy of the map, and an enlarged copy of each affected wetland can be viewed by each affected landowner. Changes in shoreland zoning will not be voted on in November 2009 because the Town has missed the deadline for placing these changes on a referendum ballot in November (see Item 3 above).

Robert Morse asked whether the “mandate” in Chapter 1000 of DEP regulations has the status of law. He asked Wright to obtain legal advice on whether this is binding on towns.

Morse said he is arranging for Dr. Kaufman, former head of Champion Paper, to give a public presentation in Waldoboro on Agenda 21, which Morse says originated at the United Nations and has been adopted by government agencies in the United States.

Dennis Blanchet asked whether the 55 communities on which the DEP imposed shoreland zoning had a resource protection ordinance in place. Wright said South Thomaston is the nearest community that has gone against the State minimum shoreland setbacks. Planning Board chairman Campbell said South Thomaston enacted a shoreland zoning ordinance that was less restrictive than the State’s, and the State overruled them.

Dick Mogel said he owns land with 1800 feet of frontage on the Medomak River. He was told that his river frontage is not currently being proposed to be placed in Resource Protection. Most of the frontage on the freshwater Medomak River is zoned Limited Residential.

Former Code Enforcement Officer John Black said he disagreed with the Town’s going from a 75-foot setback to a 100-foot setback for principal and accessory structures on salt water. He disagreed

with requiring septic systems on salt water to have a greater setback than the minimum required under the State of Maine Subsurface Wastewater Disposal Rules. He would like to see the Town's shoreland zoning regulations defeated and have the Town adopt the State's minimum setbacks, which he considers adequate.

Jeff McNelly requested that any required setback around low-value wetlands be limited to 75 feet, not 250 feet. He noted that in the current (2008) Land Use Ordinance, installation of "essential services" is prohibited in a Resource Protection or Stream Protection District, except to provide services to a permitted use within that district. "Essential services" includes water distribution lines. He said this prohibition would prevent development of bedrock wells in Resource Protection or Stream Protection Districts, which would prevent the Town from developing municipal water wells near streams. You have to go where the water is, he said, if you want to find water.

McNelly is chairman of the Trustees of the Waldoboro Utility District. They have concerns that Utility District land on which sewage treatment lagoons and spray irrigation fields are located may be placed in Resource Protection. The Utility District intends to request total exemption from the requirements of the Resource Protection District. He gave a plan of the Utility District's lagoons and spray fields to Wright.

McNelly asked whether, if the Town enacted a 250-foot setback around low-value wetlands, it can ever be decreased. CEO Wright said he does not think townspeople will vote a 250-foot setback around low-value wetlands, but that if such a setback were passed, the Town certainly could later vote to reduce it to the State minimum 75-foot setback.

A woman asked what the State does if a town refuses to adopt the new shoreland zoning setbacks. Wright said he can get information on that. His understanding is that in the 55 towns in which the State imposed shoreland zoning, there was a public hearing and the State shoreland zoning regulations went into effect. In some instance, he said, the town can be named in a lawsuit if a business or individual violates the State shoreland zoning setback and the town has not adopted the State minimums.

Morse said State regulations are not the same as State law. He recommended finding out whether the new shoreland zoning setbacks are contained in a law passed by the legislature and signed by the governor. Administrative regulations are not laws, he said, and are not binding on towns.

Dick Mogel asked what is the magic in a 250-foot setback around a wetland. What can 250 feet do that 75 feet cannot do? Planning Board chairman Campbell said the closer development is to a water source, the more potential there is for pollution. Mogel said he does not know of any land-owner in Waldoboro who is polluting. A 250-foot setback is not necessary and he is opposed to it.

McNelly said a high- to moderate-value wetland generally has patches of open water. A low-value wetland can be mowed. He said his background is in wildlife management. You can't draw a parallel between needing a 250-foot buffer around high- and medium-value wetlands and the buffer needed around a low-value wetland.

A man asked from what point you measure the setback. Wright said it is from the upland edge of the wetland as determined by soil type and vegetation type. It is not measured from the high water mark in a wet year like 2009, which had record rainfalls in June and July.

A woman *Debbie Schofield* ? asked what the level of pollution is that justifies people's property being taken from them. A man questioned whether the river is polluted. He does not think there is anything wrong with the river. George Enman said the pollution comes out of the sky. They shut the river down to clamming when it rains. Enman asked whether the Town has a record of violations that would warrant taking people's land. Wright said he has worked in Waldoboro for a year, during which time there have been three failed septic systems that he knows of. There are probably other violations that go undetected. If he gets a complaint from a citizen, he will investigate, or if he sees a building that appears to be too close to the water. He said the Town is trying to determine what is reasonable to protect the river, which is the town's number one employer.

Enman said Waldoboro residents pay large property taxes. People will object to paying tax on land they can't use.

McNelly said the Town uses the Pine Street boat landing as a snow dump. He suggested that plowing snow from dirt roads contributes silt that pollutes the river. Planning Board chairman Campbell said he has heard that the Town is considering finding another place to dump snow.

A man asked about all the chlorine that is being contributed to the river. He said chlorine is killing the eelgrass, and suggested maybe we should stop dumping chlorine into the river.

Dick Mogul asked what the Planning Board proposes to recommend, if it does not recommend a 250-foot setback around low-value wetlands. Planning Board member Flint said his preference would be to go with the State-recommended minimum setbacks for each zone. The designated high- and medium-value wetlands that have a recommended setback of 250 feet do not include the river.

Morse said again that the Planning Board ought to find out whether the State-proposed shoreline zoning changes are State law or an administrative regulation that has no force or effect in law. Flint said he will call State Senator David Trahan to find out, and he encouraged members of the audience to do likewise. Debbie Ballard agreed, saying Waldoboro residents should not let Augusta rule them arbitrarily. A man said that at the start of the July 22 public meeting, David Trahan told everybody that what the Planning Board was proposing relative to resource protection was wrong.

The public comment period ended at 8:40 p.m., and the Planning Board began discussion of what recommendation to make to the Selectmen about changes to the shoreland zoning ordinance.

#### B. Recommendation for Meeting State Minimums

A motion by Myers/Karkow to recommend to the Select Board to include in Waldoboro's ordinance revision the State shoreland zoning minimum setbacks was withdrawn before being voted on. Myers said the July 22 public meeting was a discussion of whether we should establish Resource Protection shoreland districts in certain areas of Waldoboro. Her motion tonight excludes extending the Resource Protection zone beyond the State minimum. Flint said he is not sure the Planning Board should recommend the State minimums until we find out whether or not the Selectmen are willing to contest the State. Flint said he would rather see a motion to ask the Selectmen to battle the State. Campbell said he is not sure the Planning Board should make a recommendation to the Selectmen at tonight's meeting, because there is still work to be done. Dennis Blanchet asked whether the Planning Board should poll the audience. Campbell said that is not appropriate, as the period for public input has ended.

Wright said it is appropriate for the Planning Board to take a position. The Board can assign tasks to Wright to do fact-finding in advance of a public meeting or to report results of fact-finding to the Selectmen.

On motion of Karkow/Bianchi, the Board voted 5 – 1, Flint opposed, to recommend to the Selectmen to adopt the state minimums in regard to the updated “High to Moderate” value wetlands, and go no further than these state minimums. This is Wright’s recommendation contained in the second sentence of his August 20 memo on shoreland zoning.

Campbell said it would be prudent for Wright to investigate the legality of this. It would be a good idea to send out notices to all the landowners who would be affected by the change in setback around high- and moderate-value wetlands. Wright offered to get more details on Title 5 and ask the town manager if it is appropriate to engage independent legal counsel to determine whether the State has the right to impose revised shoreland zoning regulations on towns.

Continued public comment:

A woman asked Wright to post Planning Board agendas on the Town web site. Wright said he is willing to e-mail agendas and minutes to people on request. A man asked whether Planning Board meetings in future could start with the Pledge of Allegiance. John Black said he was Code Enforcement Officer in Waldoboro for eight years, and has served as moderator of town meetings for years. Tonight’s audience does not realize that the time for public comment is over. Jeff McNelly asked whether the Board is going to deal with setbacks on low-value wetlands and the river. Is the State going to impose setbacks if Waldoboro does not? Campbell said he has made a note about this.

Discussion of agenda item 4 ended at 8:55 p.m. Most of the audience left.

5. Mobile Home Park Specific Performance Standards: Expansion Triggering Applicability of Standards

Andrew Roberts, owner of Skyview Ridge Mobile Home Park, Dan Brinkler, owner of Brookside Mobile Home Park, and Yvonne Mickles of Genesis Community Loan Fund in Damariscotta were present. Wright announced that the Waldoboro Board of Appeals has found in favor of Roberts, in a decision that Land Use Ordinance Article 5 Specific Performance Standards Section P Manufactured Home Parks subsection 7 Placement of units on lots does not apply to cases in which a larger mobile home replaces a smaller one on an existing nonconforming lot. Wright’s interpretation was that expansion of a structure on a nonconforming lot is an expansion of use. The Board of Appeals ruled that an expansion of use occurs only when an existing mobile home park adds lots, not when a larger mobile home moves onto an existing lot. Compliance with setback requirements does not apply to an existing nonconforming lot in a mobile home park. Roberts suggested having an understanding that a mobile home being moved onto an existing site in a mobile home park be subject to the setback requirements in effect when the mobile home park was licensed.

Wright said the end of the first sentence under P Manufactured Home Parks on p. 5-13 applies only to adding lots to an existing mobile home park.

Wright raised the question whether the language of the 2008 Land Use Ordinance needs to be changed in light of the decision by the Board of Appeals. Wright asked if the Planning Board

would like to take a position on this. Campbell said he does not have a problem with keeping the language of subsection 7 as it is, and just not applying it to larger mobile homes being moved onto existing nonconforming lots in a mobile home park. Karkow said he is content to have the Code Enforcement Officer take a more liberal interpretation, and not change the ordinance language. Roberts suggested adding the following wording: "For existing mobile home parks, expansion means addition of mobile home sites in excess of the currently licensed quantity."

Yvonne Mickles of Genesis works with mobile home parks statewide. She is working currently with Medomak Mobile Home Park. The park is licensed for 51 mobile homes, but has only 47 lots. She said there is no intention to place more than 47 mobile homes in the park. She and Roberts were concerned that if a nonconforming mobile home lot is not used for five or more years, it should not be considered "abandoned".

She and Roberts were concerned that mobile homes being moved onto lots in an existing nonconforming mobile home park not be required to provide a storage shed or utility building (see subsection 7 d. Utility building). Roberts said it costs \$250 to move a mobile home onto a lot in his mobile home park. If the owners of the mobile home were also required to move a utility building onto the lot, it would increase the cost to \$2,000, he said. Many mobile home owners could not afford this, and neither can the owner of the mobile home park.

Mickles said that some of the lots at Medomak Mobile Home Park are too small to have room for an 8' x 8' utility shed. Lot rent is currently \$200/month. She said that putting additional restrictions on moving onto a park lot works against the financial viability of the park.

Roberts said that Waldoboro requires a bill of sale and proof of property tax paid to the prior town, before a mobile home can be moved onto a lot in a mobile home park. He has talked with the code enforcement officers in six other towns (Augusta, Belfast, Brunswick, Damariscotta, Rockland, and Wiscasset) and none of them require either a bill or sale or proof of payment of property tax to the prior town in order to grant a permit to move a mobile home onto a lot in a mobile home park. Proof of payment of property tax is already required in order to get a permit to move a mobile home over a road. Wright said Waldoboro requires proof of sales tax paid or property tax paid.

The Planning Board took no action to recommend changes to the ordinance regarding mobile home parks at tonight's meeting.

Adjournment: The meeting was adjourned at 9:50 p.m. The final two agenda items were not discussed.

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Charles Campbell, Chairman

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Carlo P. Bianchi

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Charles Flint

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Edward Karkow

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Submitted by:

JoAnn Myers

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Susan S. R. Alexander

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Jonathan Perry

WALDOBORO PLANNING BOARD