

Minutes  
Town of Waldoboro  
Planning Board Meeting  
December 16, 2009

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Roll Call

The meeting was called to order by chairman Chuck Campbell at 7:02 p.m in the meeting room at the Municipal Building. Other members present were Carlo Bianchi, Chuck Flint, Ed Karkow, JoAnn Myers, and Jody Perry. Code Enforcement Officer Patrick Wright was present. The audience consisted of George Seaver, an applicant.

1. Minutes of November 12, 2009

On motion of Myers/Karkow, the Board voted 6 - 0 to approve the minutes of November 12 as distributed.

2. Citizen Comments on Items not on Agenda – none

3. Discussion of George Seaver's Questions regarding Uses of Proposed Building in Waldoboro Environmental Park

Seaver was present to discuss question raised in his memo dated December 1, 2009 addressed to Wright, copies of which were part of Board materials distributed in advance of tonight's meeting. He is considering constructing a new 12,000 sq. ft metal building located on the 8-acre parcel approved last year in the northwest corner of the property. Seaver has several uses in mind for the building. He asks whether any of these uses are precluded because of the location of the building within the well head protection zone. He is interested to know whether commercial bottling of water would be a permitted use. He asks whether this would be considered a new use of the well or expansion of a grandfathered use.

Wright sent a memo to the Planning Board dated December 3, 2009 summarizing his analysis and recommendations regarding the questions raised in Seaver's memo. Wright sent the memo to staff

attorneys at Maine Municipal Association for their input, and spoke with one of MMA's attorneys. The attorney he spoke with felt it is not appropriate for the Planning Board to make a determination at this time on whether commercial extraction of water is the same thing as commercial production of water. The MMA attorney said that Wright as Code Enforcement Officer can give an opinion on this question, or Seaver can consult his own attorney. The MMA attorney said her interpretation is that production equals extraction. Even legally existing uses cannot be expanded within a well head protection zone. Seaver said his anticipated use would not be an expansion. His well was used for nine years as the Town of Waldoboro public water supply. His well was providing four million gallons a month to the Town when the wellhead protection ordinance came into effect. He does not plan to exceed that volume in the proposed use for commercial bottled water. Seaver said the well water was tested last year and meets State standards.

Seaver wants to ask for a waiver of the requirement for a hydrogeologic assessment of groundwater impacts, on grounds that this has already been done. He said the Town did a hydrogeologic study to verify that the proposed new Town well would not draw down other wells in the vicinity. Wright read aloud the requirements for a hydrogeologic assessment of groundwater impacts (Article 4 General Performance Standards section F, p. 4-4 of the June 2009 edition of the Land Use Ordinance.) Seaver was told that among the firms that can do hydrogeologic assessments of groundwater impacts are Sweet Associates in Falmouth and Summit Engineering. Seaver will check whether Earth Tech can do such an assessment. Their engineers are familiar with the property.

Seaver said the well he proposes to use is on another abutting parcel, not the parcel he plans to put the building on. Wright recommended that the Planning Board do a site plan review of both parcels. They are in common ownership.

If Seaver decides against using the building for commercial water bottling, he asked if he can put up a building without a specific defined use and come back to the Planning Board for further site review after the use has been determined. It was suggested that the Planning Board review the building for the most intensive use, and if the final use is less intensive, the permit can be approved by the Code Enforcement Officer without further review by the Planning Board.

Seaver was told he will have to do a stormwater management plan that takes into account the increased runoff from addition of impervious area. Runoff calculations should be done by a qualified engineer for pre-development and post-development conditions. The increased runoff should flow into a detention pond which slows down run-off and allows primary treatment by settling of suspended solids.

Seaver left the meeting at 7:35 p.m.

#### 4. Ordinance Revision

The rest of the meeting was devoted to discussion of ordinance revision.

#### A. Public Informational Meeting on Shoreland Zoning Changes, Wednesday Dec. 23, 7:00 p.m.

Wright has sent a written notice dated December 3, 2009, to landowners whose property may be affected by recent State-mandated changes to Shoreland Zoning. The change is to meet newly-adopted State minimum requirements for State-identified wetlands classified as of high or moderate value for inland wading bird and waterfowl habitat. The Planning Board recommends amending the

Town's Shoreland Zoning Map to place these wetlands into Resource Protection. State law (Title 38 §438-A) requires municipalities to adopt "land use provisions that are no less stringent than the minimum guidelines adopted by the Maine Board of Environmental Protection. In order to be in compliance with state law, the Town must update its official shoreland zoning map. If the Town does not complete this by June 2010, the Department of Environmental Protection will impose this change upon the Town." (Material quoted is from Wright's Dec. 3 letter to landowners.)

A designation of Resource Protection for land "restricts certain uses within 250' of a resource, including clearing of vegetation and building setbacks". These restrictions, and exceptions to them, will be discussed at the meeting.

Wright said five or six people have come to his office to discuss how the new designation will affect their land. Myers suggested that Wright prepare a chart showing the current ordinance and the new language. The change is from pink to green on the shoreland zoning map. There are no changes regarding timber harvesting regulations.

B. Discussion of previous vote to increase the minimum setback of new septic systems in the Limited Residential Shoreland Zone on salt water to 200', from the present 100'.

The State of Maine Subsurface Wastewater Disposal Rules require a minimum setback of new subsurface sewage disposal systems of 100 feet from the normal high water line of a perennial water body (see Article 7 Shoreland Zoning, Section F Land Use Standards subsection 11. Septic Waste Disposal (p. 7-12 of the June 2009 edition of the Land Use Ordinance). The Planning Board voted at its March 26, 2008 ordinance revision meeting (p. 3) "to recommend that all new septic systems in the Limited Residential shoreland district abutting salt water must be located a minimum of 200 feet from the normal high-water line."

Discussion: Campbell said we need to find out if this language was in the warrant that was voted on by townspeople in June 2009, and was unintentionally omitted from the 2009 revised edition of the Ordinance. Wright said he has experience working around failed septic systems. What is important is whether the system is failing and whether people notice it. A failing septic system could be two miles from salt water and be polluting a stream that carries pollution to the river, resulting in closure of the clam flats. He suggested alternatives to requiring new septic systems on salt water to be set back 200 feet. There could be an additional fee, education about how to tell when a septic system is failing, or requirement of a contract to have the septic system pumped annually. Karkow said he favors dropping the requirement for a 200-foot setback and requiring an additional fee or requiring a contract for annual pumping of septic systems on property near salt water. Myers said septic systems disturb the soil. If in future there is more high water and more erosion of the shoreline through bigger storms, having septic systems located close to the high water line will pose an environmental hazard.

C. Street Access, Driveways, Street/Road Construction Standards (new material from Wright)

Wright gave out copies of his suggested redraft of General Performance Standards Sections S and T regarding streets, roads and driveways, attempting to clarify confusion about streets, street access and driveways. He asked Board members to review this material and be prepared to discuss it at the next ordinance revision meeting. The current ordinance language presents problems.

For example, if there are two dwellings on a driveway and a third dwelling served by that driveway is proposed, under the current ordinance language the addition of a third house by definition

changes the private driveway into a road, with different construction standards. Whose responsibility is it to upgrade the driveway to road standards? The ordinance should clarify this.

Wright suggested that one solution might be to state in the ordinance that before the Town names a road (naming is required to meet 911 standards to facilitate emergency response), if the road contains three or more houses, the road must meet Town road standards. With regard to addition of a third dwelling, Wright said it would be easy to require that any extension of the existing road be built to ordinance road standards.

Another problem is that the current ordinance requires any driveway over 500 feet in length to be built to road standards, even if it serves only one house. Flint thinks this is unreasonable. Myers asked what was the rationale for the 500-foot cutoff. Wright thinks it was primarily to improve access by emergency vehicles, especially fire trucks.

In the previous ordinance version amended in February 2008, on p. 4-18 a low volume driveway was defined as having less than 25 vehicle trips per day. A high volume driveway was defined as having a peak hour volume of 400 vehicles or more. A medium volume driveway was defined as any driveway that is not a low volume or high volume driveway. Flint thought that the Planning Board changed this by raising the low volume traffic generator. Campbell thought that the Planning Board lowered the medium volume criterion.

Wright said that in his rewrite of this section he is trying to clarify that a driveway is never a road, and a road is never a driveway. A medium volume driveway is completely different from an intermediate private street. Normally, a medium volume driveway is one that serves a commercial use or an apartment house or complex. Wright has added the word "commercial" in the definition of "medium volume driveway" in subsection 6 on p. 2 of his draft.

Wright said that in the current ordinance, sight distance was addressed in the driveway section but not in the section on roads. It needs to be addressed in both.

General rules for street access: Wright said he has been charging a fee for an entrance permit onto a public road, whether the entrance is from a driveway or a road. This needs to be addressed in the ordinance.

Road Commissioner Daigle has given input on the type of gravel required. He does not think that the specified material is readily found in our area. State-specified gravel for DOT use is 4 inch-minus material with a certain amount of fines that pass through a quarter-inch sieve. Wright suggested doing a cost-benefit analysis for gravel for use on a driveway vs. gravel for a private road. Wright has asked Perry to look into this. Wright will also ask the Road Commissioner to review the standards and make recommendations.

#### D. Campbell's List of Ordinance Revision Items to be Addressed

Campbell read from his notes on items the Board said it would address in ordinance revision. Wright confirmed that the next round of ordinance revisions will be on the warrant for vote in June 2010, not in January.

- 1) Shoreland zoning
- 2) Agriculture in Residential District: Myers was going to look into Best Management Practices and setbacks.

- 3) Outdoor wood boilers: The Planning Board has agreed to defer to the State's regulations.
- 4) Driveways and private roads: see Wright's draft distributed at tonight's meeting, for review at the next ordinance revision meeting.
- 5) Mobile home park standards and nonconforming uses
- 6) Changes to an approved subdivision. If a subdivision was approved in, say, 1972, it may be a hardship to apply new ordinance regulations to it. It was discussed that changes to an existing subdivision should be required to conform to current ordinance language only for subdivisions approved after the date of the latest ordinance revision. Wright said that according to Maine Municipal Association's legal department, the final plan of a subdivision must state "no further division" if the intent is not to allow any lot to be divided without further Planning Board review. Otherwise, a lot owner can divide a subdivision lot into smaller lots after five years. The Planning Board has been under the impression that any change to an approved subdivision is a revision and must be brought in for Planning Board review. The alternative view is that after five years, an owner can divide a lot without it being considered an amendment to the subdivision plan.

At tonight's meeting, Planning Board members agreed by consensus that the ordinance should say that any further division of an approved subdivision shall require subdivision review by the Planning Board. Wright will work on language for this. The argument is that stormwater management plans or nitrate studies for a subdivision containing a given number of lots may need to be re-done if the number of lots is increased.

7) Fire suppression: The ordinance should specify who is responsible for future maintenance of a fire pond or dry hydrant required for fire suppression for a subdivision. If the fire pond or dry hydrant is not located within the subdivision that it serves, then there must be an easement for access to the fire pond or dry hydrant location in order to permit maintenance work and testing. It was suggested to add language that the developer not only needs to provide a fire pond, but also needs to provide a performance guarantee to cover cost of future maintenance. Wright agreed to undertake crafting this language.

8) Streamlining the review process, especially for commercial projects. What size addition should trigger site plan review? A 500 s.f. addition seems low to Wright. Maybe 1,000 s.f. would be better. Campbell said that 500 or 600 s.f. is used as the trigger for site plan review of expansion in some other towns. He volunteered to look into this and suggest ideas for how to streamline the process.

Wright would like to invite the Economic Development Committee to attend an Ordinance Revision meeting to discuss the goal of a more efficient permitting process. Most of the complaints Wright hears are from small businesses.

9) Contract zoning. What is the distinction between contract zoning and spot zoning, which is illegal? The A.D. Gray school building is in the Village District. Comparison between the commercial uses allowed in the Village District and those allowed in Route 1 Commercial A and B (p. 3-7 of the 2009 edition of the Land Use Ordinance) shows what uses are common to the three districts and what uses are prohibited in the Village District. Should there be a separate land use district for A.D. Gray, to facilitate its re-use? Wright would like to do some research on what makes contract zoning legal and spot zoning illegal.

Myers commented that if we add contract zoning to the Land Use Ordinance, we have it permanently. Re-zoning A.D. Gray into a separate "A.D. Gray Zone" may be preferable. Two of the uses suggested for within the former school building are sail repairs and weaving of rope

doormats. These might both be considered “light industrial” uses, currently not permitted in the Village District.

Campbell commented that Waldoboro does not have enough land zoned Industrial. There is the Osram Sylvania site and the industrial park.

10) Campbell said major roads off Route 1 such as Routes 220 and 235 should have a transitional zone which allows more of the activities allowed in Route 1 Commercial A and B.

Wright alluded to the visioning process, describing what Waldoboro should look like in 2030. We need to update the Comprehensive Plan by 2012. Waldoboro has signed onto the Gateway 1 project, which will give the Town \$10,000 - \$35,000 to hire consultants to help meld the visioning process with the existing comprehensive plan and the Gateway 1 plan. The Gateway 1 process is to be completed in the next 18 months.

5. Next Meeting: Wednesday, December 23 , 7:00 p.m. – Public informational meeting on Shoreland Zoning changes mandated by the State of Maine

Adjournment: The meeting was adjourned at 9:02 p.m.

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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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JoAnn Myers

Submitted by:

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Susan S. R. Alexander

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Jonathan Perry

WALDOBORO PLANNING BOARD