

Minutes
Town of Waldoboro Planning Board
Ordinance Workshop and Public Information Session
December 23, 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 Ed Karkow, JoAnn Myers, and Jody Perry. Code Enforcement Officer Patrick Wright was present. Fourteen or fifteen people were in the audience, including Deborah Bellows, Andy Benore, Gifford T. Campbell, Otto A. Hunt, Jr., Patricia M. King, Mary Logue, Jeffrey McNelly, Larry Miller, Mark Miller, Jeanette Wheeler, and Mahlon Wheeler.

1. Minutes of December 16, 2009

On motion of Myers/Karkow the Board voted 4 - 0 to approve the minutes of December 16 as distributed.

2. Citizen Comments on Items not on Agenda – none

3. Public Information Session Regarding State Minimum Guidelines for Adopting Updated High and Moderate Value Wetlands

Otto Hunt protested that there were not enough people present to justify holding a public information meeting. Some 220 notices were sent to affected landowners on December 3. Wright agreed that Christmas week is not the best time to hold an informational meeting. He has met individually with a number of landowners since the notice went out. He explained that there will be a public hearing on proposed changes to the shoreland zoning map. Tonight's meeting is not a public hearing. In order for the revised shoreland zoning map to be on the warrant for vote in June, changes must be finalized in February and recommended to the Selectmen in March. Planning Board chairman Campbell said he thinks tonight's meeting should go forward for those who are in attendance, rather than being adjourned because too few people are present.

Wright spoke briefly about the proposed changes in the shoreland zoning map. The proposed changes are to meet current minimum shoreland guidelines. High to Moderate value wetlands for inland wading bird and waterfowl habitat have been required by the State to be in Resource Protection since 1989. The wetlands were originally identified by black-and-white aerial photographs taken in 1972. Higher-resolution aerial photographs in color were taken in 2003-2004.

These photos are the basis for the State's changes in designation of High and Medium value wetlands providing habitat for inland wading birds and waterfowl.

Following the last public information meeting (the Planning Board's special meeting on revisions to the shoreland zoning map, held at Miller School on July 22) the Planning Board has reduced its Resource Protection designation recommendations, and now recommends that the Town adopt only the mandatory minimum Resource Protection areas required by the State. As Wright said in his letter notification of December 3, 2009 to affected landowners, "Title 38 §438-A requires that municipalities 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."

The current shoreland zoning map and the proposed revision to the shoreland zoning map were displayed in the meeting room. The proposed revised map is also available on the Town's website at <http://www.waldoboromaine.org/planningDevelopment/planningDevelopment/shoreland.html>.

Wright defined the shoreland zone as the land area 250 feet from the normal high water mark of any pond over 10 acres, wetland greater than 10 acres, river, or salt water body, and 75 feet from certain streams, defined as those streams shown on the USGS 7.5-minute quadrangle maps for Waldoboro below the confluence of two smaller streams. The Shoreland Zone contains several different land use zones: Resource Protection, Limited Residential, Limited Commercial, General Development, Water Dependent Commercial Maritime Activities, and Stream Protection. These land use zones are an overlay on the Town's Land Use Districts (see the map of land use districts in the 2009 edition of the Town's Land Use Ordinance).

Wright said one purpose of the shoreland map is for the use of the Code Enforcement Officer when a request for a permit is received. Wright will go out to the site and make a determination what part of the property is within the Shoreland Zone, and what setback applies to the proposed activity. (See "Shoreland Zoning Resource Protection Frequently Asked Questions", distributed to the audience and the Planning Board at tonight's meeting). The FAQ handout includes a comparison of standards for certain uses in the Limited Residential shoreland zone and the Resource Protection shoreland zone. In cases where the whole property lies within the 250-foot shoreland zone surrounding a High or Medium value wetland, the Planning Board can allow buildings under certain conditions and restrictions, so long as a 100-foot setback is maintained.

Wright said that if landowners feel their property is improperly included in Resource Protection, he will make a site visit. He asked attendees at tonight's meeting to leave information on a sign-up sheet giving their name, address, the map and lot of the property in question, and their statement of what error they claim has been made. Wright will collect all such challenges and forward them to the Maine Department of Environmental Protection (DEP). If necessary, staff from DEP or Inland Fisheries and Wildlife (IF&W) will visit the site to make a field determination. On-site determinations always carry more weight than interpretations from aerial photography.

As an example, Wright showed an aerial photograph of the former Town dump, which has been mapped as Resource Protection but is no longer a wetland. The wetland delineation in this area will be verified in the field, and the draft shoreland zoning map changed.

Wright said the edge of a wetland is determined by two factors: soil type and vegetation type. If a landowner disagrees with the edge location shown on the shoreland zoning map, the owner may hire a qualified professional to challenge the delineation.

Discussion

Patricia King said her family never sees any inland wading birds or waterfowl on their property, part of which is in Resource Protection. They visit the area frequently. The amount of open water is very small. Wright said he would be happy to visit her property and submit her claim to the State authorities. King did not sign up on the list of property owners wishing to challenge the designation.

Gifford Campbell said a beaver dam has flooded a portion of his property that is normally not wet. There is a brook, and the beavers have dammed the brook. Wright said the wetland determination is made on the basis of soil type and vegetation type. Vegetation takes a long time to change. Temporary flooding would not change the vegetation type. He asked the speaker to write down his information on the sign-up sheet and Wright will forward the matter to IF&W.

Debbie Bellows asked who is going to compensate the landowner for tax paid on undevelopable land. Wright has consulted assessors' agent Darryl McKenney. McKenney said that he will deduct land zoned Resource Protection from the net acreage of the property, just as if it were under water. Bellows complained that other taxpayers who do not have land in Resource Protection will have to pay more tax to make up for the reduced taxes paid by landowners with land in Resource Protection.

Jeff McNelly said that according to case law, a "taking" of land requires that a landowner must lose 100% of the value of the land. If the owner loses less than 100% of the value, courts of law do not consider it a "taking" of land.

Debbie Bellows said she is glad that the Planning Board no longer recommends greater setbacks than the State minimums for shoreland zoning, but she is not happy with the State minimums. The federal government seeks to increase the power of the Environmental Protection Administration (EPA). Who knows where this will stop in future? The present 250-foot shoreland zone could be increased to 500 feet. She would like the Town to look into whether it must comply with State minimum requirements for shoreland zoning.

Wright replied that he has written correspondence with DEP about how legal this is and whether towns and landowners have to comply with shoreland zoning. He has consulted not only with DEP but with attorneys at Maine Municipal Association. All the attorneys agree that the shoreland zoning restrictions have been done legally and that the required setbacks carry the full weight of law. The basis is in Title 5 Administrative Procedures.

Larry Miller asked how the State determines what is considered a "stream" requiring a 75-foot setback. Wright said a "stream" by definition under the shoreland zoning statute (Title 38 § 436-A) is a free-flowing body of water from the outlet of a great pond or the point of confluence of 2 perennial streams as depicted by a solid blue line on that show up on the USGS 7.5 minute map. Waldoboro's shoreland zoning map shows all streams that show up as a solid line on the USGS 7.5 minute map. There is a 75-foot stream protection setback from designated streams, shown in purple on the shoreland zoning map.

Jeff McNelly spoke as chairman of the Board of Trustees of the Waldoboro Utility District. That Board wrote a formal letter to Wright asking that all Utility District land be exempted from classification as Resource Protection. The DEP does not favor such exemption. McNelly argues that the Utility District land should qualify for exemption under “any mitigating factors” in Title 38. Considerable public money has been spent to treat the Town’s wastewater without putting treated wastewater into the Medomak River. The Utility District does not want to be limited in its present or future activities by having any of its land designated Resource Protection. The current setback is 100 feet, which conforms with the Utility District’s permit.

Wright said that “essential services” are exempt from shoreland zoning regulations, but that these could change in future. McNelly fears that being zoned Resource Protection might in future limit the expansion of the spray fields. The statute reads that IF&W has to make a determination that the land is no longer “habitat” in order to be exempt from shoreland zoning. Wright has visited the Utility District land and says it is beautiful habitat. He asked Planning Board members what they wanted to do. If the Utility District requests the Town to map the land as “not Resource Protection”, Wright suggested that the Town could send the map to DEP along with a letter explaining why the Utility District land is not zoned Resource Protection on the Town map.

Chairman Campbell asked Wright if he can arrange for IF&W to make a site visit to evaluate the Utility District land. We know it is wetland and that it is habitat. The Planning Board agreed to ask Wright to contact IF&W seeking guidance. Wright said this is not the last chance to petition IF&W. If conditions change and the open water at the Utility District site is no longer present, or is reduced in size, the Town can petition for reclassification at a later date.

Speaking as a private citizen, McNelly repeated his request to the Planning Board that the shoreland setback distance from lower-value wetlands be reduced to 75 feet, from 100 feet in the present ordinance. Wright confirmed that according to State guidelines the setback from lower-value wetlands can be 75 feet. McNelly said the Planning Board has not been responsive to his request. He asked why the Planning Board is limiting discussion. Campbell said that the only shoreland zoning item intended for vote in June 2010 was updating the shoreland zoning map, not changes to the text of the shoreland zoning ordinance. Wright offered to draft the necessary language to change the setback distance to 75 feet from low-value wetlands. Campbell agreed to place this item on the agenda for discussion at the next ordinance revision meeting. Ordinance revision meetings are normally held on the fourth Wednesday in the month: January 27 and February 24 are the next two.

Myers asked Wright if tonight’s meeting is being broadcast on local public-access TV. Wright said the meeting is being video-recorded, but not broadcast live. People not at tonight’s meeting will be able to view the meeting later, but he is not sure of the schedule.

Wright went through the process of revising the shoreland zoning map for vote in June, 2010. There will be a public hearing, probably in February, on any and all proposed ordinance changes. After the public hearing, the Planning Board will determine whether any changes should be made based on input at the public hearing. The next step is to submit recommended ordinance changes to the Selectmen by March 24. The Selectmen will decide whether to place ordinance revisions on the warrant for town vote in June. Myers said there should be another public information meeting before the public hearing.

4. Ordinance Review

Wright and Campbell were not prepared to discuss any other ordinance review items at tonight's meeting.

5. Next Regular Planning Board Meeting: Wednesday January 13, 2010, 7:00 p.m.

Adjournment: The meeting was adjourned at 8:05 p.m.

Charles Campbell, Chairman

Edward Karkow

Submitted by:

JoAnn Myers

Susan S. R. Alexander

Jonathan Perry

WALDOBORO PLANNING BOARD