

CAMDEN PLANNING BOARD

Minutes of Meeting

March 2, 2011

PRESENT: Chair Chris MacLean; Members Richard Householder, Jan MacKinnon, Kerry Sabanty and Lowrie Sargent; Alternate Member Sid Lindsley; and CEO Steve Wilson

ABSENT: Alternate Member Nancy McConnel; and Jeanne Hollingsworth, Recording Secretary

1. PUBLIC COMMENT:

Mr. Sargent commented that he regrets that Governor canceled the Gateway 1 Program. In spite of the hurdles it faced it would have been a good thing for the mid-coast. He thanked Don White for all the time he spent both representing Camden and running the whole show. Camden is fortunate to have someone who is as dedicated and skilled in Town to represent them. He understands that Mr. White and other Gateway volunteers plan to continue to meet to try to keep the concepts of the project before various planning boards.

Don White: Thanked Mr. Sargent for his comments; the Implementation Steering Committee is planning to meet informally next week to discuss how to continue. Mr. White read from the letter he received from DOT Commissioner David Bernhardt dated March 1, 2011, in which he was notified of the immediate suspension of the Gateway 1 Planning Process because it does not correspond with the immediate priority of the Administration to concentrate resources on infrastructure needs - roads and bridges in particular.

Mr. White then quoted a recent article in the *Lincoln County News* by reporter Sam Baldwin which says: (1) according to the Governor's Communications Director Dan Demeritt the entire directive came from the Governor himself through the Commissioner of Transportation; (2) according to Peggy Duvall, DOT's Acting Chief Planner, the Department will be looking at the contracts that are still out to Towns for small project on a case-by-case basis; and (3) that Mr. Demeritt says that the stop-order came from Governor LePage because he does not support the expenditure of funds on this project at this time: "The Governor feels that we need paving not planning." There will be a meeting of interested parties - current and past members of the Gateway Steering Committee - on Thursday, March 10 at 5pm in the Rockland City Council Chambers. Anyone is welcome to attend to share ideas on how towns might collaborate to continue the program.

He added that the work that Jeff Nims did, and that Steve Wilson is continuing regarding proposed changes to the Comprehensive Plan, may be worthy to continue considering. He hopes the Board might consider if there are any of the proposed changes that would still be worth putting forward to the voters. The work has already been done, and the Board could pick and chose only those amendments they think are important in order to avoid overwhelming the voters. Those could be scheduled for discussion and perhaps go forward.

Mr. White is trying to find out the status of the payments to Camden for the work that was done under their Gateway 1 Planning Grant. It is clear that the Town has paid their bills from the consultants, but Mr. White is trying to find out if Camden has received all of their grant funds from the State. The goal is to determine if there is a possibility that all grant funds that have not yet been dispersed to towns are up for reconsideration, or if it is only those funds allocated for work that has not yet been performed under those grants that can be withheld. Mr. White feels

that if a town proceeded in good faith to hire and pay a consultant according to the terms of an approved grant proposal, when that work has been completed the town should be fully reimbursed. If the DOT is interested in building on the trust they say they are trying to generate through the Gateway 1 Project, they should honor their agreements with the Towns to provide this money. All the approved grants had to pass muster with DOT's Office of Contracts, but Mr. MacLean believes that, generally, there is the Doctrine of Governmental Immunity from certain kinds of contracts and obligations. There are fifteen of these contracts that have been approved, but many of the Towns have not completed the work contracted. Camden was ahead of the game and ready to go when they got the money.

Mr. White also noted that there has also been a directive from the new Governor as part of the budget process that the State Planning Office be dismantled. Efforts to do this in the past have failed in large part because there was no support from the Administration in power; this time it is different. A committee made up of various department heads has been formed and ordered to report to the Governor by December 1, 2011, on a process to dismantle the SPO as of January 1, 2012. Part of the committee's work is to reassign the responsibilities and union personnel to other Departments – appointees may not fare so well in being reassigned. Without this office to assist in planning, there will be more pressure on towns to take over the work that the SPO has done previously.

2. MINUTES:

The Minutes of February 16, 2011 will be reviewed when the Recording Secretary is present.

3. PUBLIC HEARING

SUBDIVISION ROADS

Amend Article 9 Section 4 by adding the following sentence: "No subdivision road shall be presented to the voters for acceptance until at least seventy-five percent (75%) of the subdivision lots have been issued Certificates of Compliance."

The concept behind this amendment is to create a threshold before the Town would accept the responsibility for subdivision roads that have been developed. This change is being proposed because the Planning Board has been concerned that the Town is put at risk of making repairs to roads for damage caused during the development of subdivision lots. This burden of wear and tear caused by development would fall to the taxpayer instead of to the developer. By placing a 75% threshold of developed lots the risk of the Town incurring expenses for repairs caused by damage to the roads during development of the remaining lots is reduced to a more acceptable level.

The Chair asked if there were any comments and Mr. White asked how many roads would be affected by this change and would the houses have to be completed. Mr. Sargent responded that the houses would have to be habitable. Currently the Town inspects and approves completed roads before those roads can go to the voters for acceptance; there is no other criterion. The situation addressed by the proposed amendment does not happen very often because there are not very many subdivisions being built. The concern is that the most likely time for damage to these roads to occur is during construction – heavy trucks and equipment can easily damage roads. It is unfair for the public to be responsible for these repairs. But if the developer has financial responsibilities for these roads, the developer has an interest in following through on making those responsible for damage pay for repairs. Also, even though inspections are routinely

conducted during construction of sewer systems and drainage systems, until they are actually used any problems with their proper function won't surface. This amendment is further safeguard that the taxpayer won't have to pick up the bill for this work. Ms. MacKinnon also thinks it is not fair for taxpayers to bear the financial burden of taking on roads when a subdivision developer either misjudges the market or the market isn't there.

There were no other comments or questions and the Public Hearing was closed.

MOTION by Ms. MacKinnon seconded by Mr. Sabanty that the amendment be forwarded to the Select Board with the recommendation that it be sent along to the Voters and placed on the June Town Warrant.

Discussion: The Chair noted that the only opposition raised before was that there could be a significant adverse impact on any public housing developments. Throughout the process the Board has been encouraging the opposition to please come forward to present information about how the adoption of this amendment would serve as the death knell of any future public housing development in Camden. Although the Board was provided general information about public housing development in Camden, the Chair does not feel that he was provided with any specific information that the passage of this amendment would create any particular hardship other than the general financial hardships that follow any housing development in this economy. There were no other comments.

VOTE: 6-0-0

Mr. Sargent will make the presentation of the amendment to the Select Board and other members will attend in support.

GATEWAY 1 ENDORSEMENT

Adopt or Endorse the Gateway 1 Inter-Local Agreement

The Board announced they are not going forward with the Public Hearing on Gateway 1 because it was announced yesterday that the Governor has suspended the program.

5. DISCUSSION:

1. *Minor Field Adjustments:* There were none
2. *Site Plan Pre-applications:* There were none
3. *March 16th Meeting:* There are no applications to review and the CEO will be in Bangor at MUBEC training until at least 4:30. There is no urgent reason to convene a meeting and Mr. Sargent suggested that members review all the various Wind Ordinances they have been given and be prepared to discuss how to proceed with this issue at the April 6th meeting. They can also discuss the suggestion from Friends of Ragged Mountain that Camden and Rockport consider jointly hiring the noise consultant, Robert Rand.

The Chair argued his position that there is no need to wade into what could be a controversial issue: the State cannot trump the Town's protective ordinance, which in this case is the High Elevation Area Performance Standards – two issues where facts were misrepresented during the

initial presentations to the Board. In addition, there is no indication that anyone is interested in developing wind power in the area. He sees no reason to make this a priority. He would rather see the issue evolve in other locations and see what is learned and not see the taxpayers of Camden pay for an acoustical engineer for an issue that has so little relevance at this time.

Ms. MacKinnon referenced the Friends of Ragged Mountain letter and the fact that they discounted the information provided regarding protections already in place. She also is curious about the reference to the \$5000 already spent to do a feasibility study – was it Camden’s money, what was studied?

Mr. MacLean asked the Board how to proceed on the Wind Ordinance. He does not want to get involved in things that do not have to be done. He does think that it is the Board’s role to move forward and prioritize issues when they are of great community importance. But the thing that caused people to rush in here was the thought of having wind turbines on top of Ragged Mountain, that and the fact that the Board had been told that they had to act because State legislation could override local ordinances and put turbines on top of Ragged Mountain unless we stopped them by enacting our own Wind Ordinance that placed limitations on them. All that has proved to be a fallacy and in fact Camden’s ordinances do prohibit them here. This is extremely complicated and he asks whether or not the Board wants to devote time and resources to bringing in experts and perhaps competing experts to sort through the issues.

Mr. Householder thinks before making this decision the Board should go through their list of other proposed revisions again. He also gave the Board a heads-up that the working committee for the Historic Preservation Ordinance is nearly ready to submit their proposal to the Planning Board for their review. It is quite lengthy – nearly 25 pages long and will take time to work through.

Mr. MacLean agreed that this was an issue the Board should discuss, and he also informed the Board that he has learned from Mr. Wilson that there is significant development at the Tannery site and at the old Knox Mill, and that applications for work at these sites could be coming before the Board in the near future.

Mr. Householder would agree with the Chair regarding his position on the Wind Ordinance.

Mr. Lindsley is of the opinion that it is better to have a statement in the Ordinance that would actually forbid wind turbines above 500’ in Camden instead of relying on the current language that says that no commercial development is allowed in the High elevation District. He thinks lawyers can get around any language and if this is really what the Board wants to do they should say so. Mr. Wilson cautioned against forbidding turbines altogether – that is problematic. But certain standards can be applied that in effect do the same thing, like limiting wind turbines above 500’ to being only 6’ tall (for example) – no one would build in that case.

If the Board does decide not to pursue a Wind Ordinance at this time, Mr. Wilson recommends looking at the exemptions to the height limits for structures like cell towers to make sure that wind turbines are specifically not included as an exemption. Mr. MacLean wonders if that isn’t doing exactly what they should not do and that is prohibit them anywhere in Town – this would take more discussion.

Mr. Sargent does not think they should be writing a Wind Tower Ordinance right now because of the huge amount of information that will be gathered. He thinks it would be folly for the Board to go to the Town and ask for money to hire experts that no-one can even identify. But he thinks that the Friends of Ragged Mountain are going to continue to come and ask that the Board do this and he doesn't want to be caught flat-footed, and he doesn't want it to become a Citizen's Referendum because he thinks it is a better process for changes to come before the Board. He thinks that the Board should look at the issue and then decide what it is that they need to know to proceed. Part of this process may be for Mr. Wilson to go through the Ordinance and find where there are places where small adjustments or clarifications could be made to eliminate any loopholes. He agrees that turbines can't be allowed totally, but he does agree with Mr. Lindsley that another lawyer's legal interpretation of the Ordinance on behalf of his clients could be different than the Town Attorney's interpretation and a way could be found to push it forward. He believes they should spend an hour or so talking about how changes to the Ordinance might be made and where. Mr. Wilson asked if the Board wanted to allow small residential towers. Mr. Sargent replied that the Friends of Ragged Mountain say they support wind power but they don't want turbines on Ragged Mountain and they don't want them in the Harbor or anywhere 2 miles out – that is not Camden's territory, but the Board needs to listen to the Friends, not ignore them and do something. Mr. Sargent believes the Board will learn a lot from the other towns going through this process now and suggests taking advantage of what they are doing and learning as they go. In working on the Historical Review Ordinance the committee took advantage of what other towns have done and it was very helpful and allowed the process to go quickly.

Mr. MacLean says that one thing that makes him feel more comfortable about not rushing in is that he is sure that the Friends would come forward with a Moratorium that would give the Board the opportunity to get to work if anyone came to Town with a proposal for wind energy. He is not opposed to Mr. Sargent's suggestion and asked Mr. Wilson to let the Board know when he has had a chance to review the Ordinance for "loopholes", so they can set aside some time to talk about it.

4. Other:

Mr. Householder asked if there had been any further communication from neighbors regarding the Reny's parking lot discussions; Mr. Wilson said there had not.

Is money still coming in for the Verizon lease? Mr. Wilson said he knows the lease payments have been made last year, but he doesn't have current information. He did inform the Board that the permit has expired and they will have to go through Site Plan Review. Mr. MacLean remembered that the Attorney had represented to the Board that the work to the tower site would begin in two to three months after approval had been received; he now believes this information may have been misrepresented.

Ms. MacKinnon asked if the Town has hired an Economic Development Director yet. The Town hired a former deputy director of the State Department of Economic Development, Brian Hodges.

Ms. MacKinnon asked about Reny's parking lot application and Mr. Wilson replied that nothing has come forward.

Ms. MacKinnon has a question that came up during the review of the Spear Subdivision and the reason why Minor Subdivisions aren't allowed in the Rural Districts – is it because it would

create a conflict with the Open Space Zoning Ordinance? Mr. Lindsley wonders if it is because subdivisions in rural areas require Home Owners Associations, etc. – that is not part of a Minor Review. Mr. MacLean went on to describe his frustration with the way the review process of the Spear Subdivision was completed and how he didn't see how any review would, or could, actually be followed so it isn't nonsensical. Mr. Wilson suggested that the Board might want to consider amending the Ordinance to provide for a special review process when subdivisions cross town lines that would state that the Board did have the opportunity to waive review – such language isn't there now; they wouldn't have to waive review but they could. There might be a way to only review the standards they believe may apply and waive review of the non-relevant performance standards. Mr. Wilson suggested that he could review the tax maps of the abutting towns to see what kind of scenarios might come up. Mr. MacLean thinks that perhaps the waiver provisions for waiving review could be included in the current Ordinance during the Pre-application Meeting. This would give the public the opportunity to weigh in on this procedure.

There being no further business before the Board they adjourned at 6:30 pm.

Respectfully submitted as transcribed from tape,

Jeanne Hollingsworth, Recording Secretary