

CAMDEN PLANNING BOARD

Minutes of Meeting

August 4, 2010

PRESENT: Chair Chris MacLean; Members Richard Householder, Jan MacKinnon, and Lowrie Sargent; Alternate Members Sid Lindsley; CEO Jeff Nims; and Select Board Liaison Deb Dodge
ABSENT: Member Kerry Sabanty, Alternate Member Nancy McConnel and Recording Secretary Jeanne Hollingsworth

1. PUBLIC COMMENT:

No one from the public came forward. The CEO introduced his successor, Steve Wilson. Mr. Wilson has four years experience in Southwest Harbor, a coastal town that is also a tourist community. He will begin work on the 16th of August so they will be able to work together for a month before Mr. Nims leaves.

2. MINUTES:

Review of the minutes was deferred until the Recording Secretary was present.

3. PUBLIC HEARING:

Proposed Ordinance Amendments

As part of the process in moving these amendments to Town vote in November, the Board held the 1st of two Public Hearings. Few members of the public was present and the Chair went directly to Mr. Nims for a summary without reading procedures.

Zoning Ordinance

1. *Amend Article III, Definitions, GREAT POND, by adding the following sentence:*

Any pond known as GPA, pursuant to 38 M.R.S.A. Article 4-A, Section 465-A.

A housekeeping change to create a connection between the terms "GPA" and Great Pond.

2. *Amend Article III, Definitions, by deleting the definition of "Wetlands, Coastal".*

A housekeeping change made to avoid confusion with the more current definition, "Coastal Wetlands".

3. *Amend Article VI, Nonconformance, Section 2, Nonconforming Lots, (2),(b), last sentence as follows:*

When such lots are divided, each lot this created must be as conforming as possible to the dimensional requirements of this Ordinance, as determined by the Zoning Board of Appeals.

This change is being made to clarify who makes the decision when there are two structures on a non-conforming lot and the owner wants to divide the lot.

4. *Amend Article VII, Zoning Board of Appeals, Section 3, Powers and Duties, (4) as follows:*

To approve, approve with conditions, or disapprove requests to:

- (a) change a nonconforming use such that it is less nonconforming or no more nonconforming than the lawfully existing situation, as authorized in Article VI, Section 3;
- (b) divide a single lot of record that has two or more principal uses or structures, as authorized in Article VI, Section 2, (2), (b);
- (c) relocate a nonconforming structure that is located with the shoreland setback area, as authorized in Article VI, Section 6, (2);

(d) reconstruct or replace a nonconforming structure located within the shoreland setback area, as authorized in Article VI, Section 6, (3)

This section was changed to conform to Article 6 and changes made over time to the Shoreland Ordinance.

5. *Amend Article XII, Site Plan Review, Section 4, (5) as follows:*

In addition to items (a), (c), (d), (l), (m), ~~and (o)~~ and (q) in Section 3, applications for Piers, Wharves, Breakwaters and Boat Ramps shall include:

To correct an omission made when the submissions for Piers, Wharves, etc. were pared down to list only those that applied. This adds back the requirement for a signature block on the Plan.

6. *Amend Article XII, Site Plan Review: (See attached "Design Standards")*

The Board worked on these proposed changes for many months coming to the most recent version which results in a concept of mandatory review with voluntary compliance. The purpose is to get people who are renovating buildings in the Downtown to come before the Planning Board, explain what they are doing, give the Board a chance to ask questions/make suggestions. There are standards that they will hopefully comply with, but if an owner for some reason decides that they can't do that, they won't have to. Mr. Nims gave a brief overview of the standards.

Mr. Sargent brought up a point that remains confusing with regard to the "Voluntary compliance" aspect. He suggested changing the wording in Section 2. Procedures with regard to approval. "...the Board shall act to approve, approve with conditions, or disapprove the site plan application..." He wondered if a Plan was not approved if that would impact the applicant when he tries to obtain funding for the project. The Board discussed how to get the point across that compliance with the decision was non-binding but that the procedure to be followed to reach that decision would be just like any other Site Plan under review. They discussed making the non-binding and voluntary aspects of this particular process more obvious in the wording, but left the language as is for now. Mr. Nims did suggest that the Applicant would be provided with a copy of the Notice of Decision. He will work with Town Attorney Bill Kelly to see if they can find language to put into the NOD that would make it clear that compliance is voluntary not mandatory. They can take that Notice to the bank if they have a Plan that was non-compliant.

No proponents or opponents came forward. Deb Dodge asked the Board if they had thought about how they will determine whether to hold or to waive the public hearing. Mr. Householder replied that it will probably depend on the extent and nature of the work proposed whether or not it makes sense to hold a hearing.

No one else came forward and the Public Hearing was closed.

MOTION by Mr. MacLean seconded by Ms. MacKinnon to move the six Ordinance Amendments forward to Public Hearing in two weeks.

VOTE: 5-0-0

Subdivision

The Public Hearing on the Subdivision amendments was opened.

1. *Amend Article 9, Inspections and Enforcement, Section 4, by adding the following sentence:*

No subdivision road shall be presented to the voters for acceptance until at least 75% of the subdivision lots served by the road have been sold.

Currently there is no requirement except that the roads go through a winter. This change was made at the request of the Board to release the Town from possible liability for damages to these roads during the construction phase. The Board revised this language to address the fact that it was during the time that the houses are being built that damage can occur. The revised language is:

No subdivision road shall be presented to the voters for acceptance until at least 75% of the subdivision houses have been built and occupancy permits issued.

2. *Amend Article 10, Performance Guarantees, Section 1, as follows:*

The Final Plan shall be accompanied by a performance guarantee, or, at the sole discretion of the Planning Board, a conditional agreement. Performance guarantees are ~~not~~ required for all utilities in minor subdivisions.

Although minor subdivisions do not have roads, they do have utilities and they will now be required to provide this guarantee.

No one came forward to speak for or against the proposals. The Public Hearing was closed. The CEO confirmed that the Board is permitted to make substantive changes at this first hearing, but not after this evenings' meeting.

MOTION by Ms. MacKinnon seconded by Mr. Householder to send the amendments forward with the aforementioned changes to Public Hearing.

VOTE: 5-0-0

DISCUSSION:

1. *Site Plan Review pre-applications:* There were none.

2. *Minor Field Adjustments:* There were none.

Mr. Nims updated the Board on the Mountain Arrow situation: He is still trying to sort everything out and has communicated with Mary O'Connell, Trygve Bratz and Will Gartley. The catch basin is in and it is on the O'Connell property. Although not certain, Mr. Nims thinks it has probably been there a year or longer. Trygve claims that she gave her consent as part of the land swap – which never went through. Mr. Bratz, as part of the original swap, had offered to install landscaping on the O'Connell property which he did before the land swap fell through. Mr. Bratz claims that the catch basin went in at the same time the landscaping did. She claims she knew there would be drainage work done to her property but she never knew it to be a catch basin. Town Attorney Bill Kelly's conclusion is that it has very little impact on Subdivision Approval. The catch basin isn't located within the Subdivision, so there is no role for the Town to play – it is between the two parties. However, the water that the basin is catching goes into the storm system for Mountain Arrow, and Mr. Nims successfully argued to Bill Kelly that he thinks the developer should have to show that this additional water can be handled by the existing storm drain in Mountain Arrow Drive. He will ask Trygve to request a Minor Field Adjustment and to provide a letter from an engineer with calculations using the additional water and a statement that the system can handle the extra storm flow.

Mrs. O'Connell does not want the basin on her property and will probably ask that it be removed. Mr. Nims will hold off on the Field Adjustment issue until there is a decision of whether the drain comes or goes. This is a private property issue requiring private action.

The DOT did approve the wall at Route 1. The CEO assured Mrs. O'Connell that he was sure that in the future, this Planning Board would not approve a temporary driveway unless it was on a Plan.

3. *High Elevation Forestry:*

The CEO referred the Board to Article X Page 22: High Elevation Areas:

The first point he made was that the Section (1) Applicability limits uses in these areas to, among other things, forest management. Section (3) Performance Standards (d) says: "Tree cutting for noncommercial or forest management purposes is permitted..." His guess is that the drafters did not intend to exclude noncommercial cutting, but consider the term to be interchangeable with forest management purposes – non-commercial forest management. He believes that the concept the Board is going to have to deliberate is whether commercial logging is permitted.

Ms. MacKinnon doesn't believe that it is necessarily commercial logging that is the problem – much commercial logging is done selectively and lucratively – it is clear-cutting that is causing the problem here. People don't want to see clear-cutting at high elevations for many reasons.

Mr. Nims referenced Barry Brucila's testimony at the previous meeting regarding commercial forestry and believes that it would be interesting for the Board to hear more from Ms. Brusila about why she thinks, as a forester, that it is possible to do commercial logging at high elevations without doing damage. Her big point was about slopes of over 25%. He thinks the Board needs a discussion about how they feel philosophically – if they find that it is possible to do this work without damage, do they want to allow it.

He offered a definition from the University of Kentucky:

Commercial logging is the harvest of timber from forests with the intent to sell the product.

Mr. MacLean agrees with Ms. MacKinnon that perhaps they shouldn't differentiate between commercial and non-commercial logging, but concentrate instead on the limits of cutting allowed: does the Board want to put limits on cutting at high elevations, and if they do they need to specifically define how much cutting can be allowed. Shoreland Zoning has good descriptions of how much cutting can happen to preserve the aesthetics. He would like to honor the principles behind the creation of the overlay that the Land Trust talked about.

Mr. Sargent: How was 500' selected as the demarcation line – was it State or local? (Ms. Dodge offered her thoughts but they were not audible on tape) 500' is only high because our elevation starts at 0'. He agrees that what needs protection are the slopes, and if Mr. Wright (the petitioner asking for an amendment) doesn't have an easement that allows him to reach his property without doing damage to the abutter's property or to the slopes then that is a separate problem. He may be allowed to harvest but may not be able to get there, or he may have to use helicopters. He'll come down on the side of the rights of the property owner to harvest, but does agree that there needs to be a better description of how much harvesting is permitted. He thinks the Board needs advice from foresters on what is a reasonable "contiguous" area – and what does that mean. If the Board allows as much as ¼ acre to be harvested well so it will reforest should that be objectionable?

Ms. MacKinnon: Mr. Wright owned this land before the amendment was put in place. Essentially his expectations of using that land as a woodlot were stripped from him. There

should have been some sort of relief for him when that Ordinance change went into effect. He had logged it 20 – 30 years ago, so he has been using it. And then he couldn't fix it after the ice storm because of the new changes.

Deb Dodge: Suggests that the Board look at the Comprehensive Plan where it talks about "Natural Constraints" – Chapter 6. There might be a clue about why this issue was raised originally. Mr. MacLean doesn't think that they need to try to divine what the thinking was that went into this statute. It is pretty poorly worded and if the Board thinks that it is an important issue, we can review it and create a new ordinance based on what the Comp Plan says, what the right values are, and what the right elevation is.

Because it is a big issue, the Board should create a road map of how they want to attack it for next June. Bring someone from the Forestry Department (a neutral party) before opening up to the Public for comments. The forester should be given the Ordinance to review before he comes in and then give his opinion on the content and what he would recommend. He should also be given the background and location area for the district and the conflicting interests.

Mr. Sargent asked Mr. Nims to break out the other portions of the Ordinance where he found confusing wording so they can be addressed as well:

(2)(a): Starts out with "Notwithstanding...Open Space Zoning, lots shall not be clustered..." Mr. Nims sees this as overriding the Open Space requirement for clustering and wonders what Bill Kelly thinks of the wording. Mr. Sargent added that it is nonsensical: if the purpose is to protect the view, then clustering is the way to go to end up with a bigger chunk of open space available for wildlife habitat.

(2)(b): This standard appears to be applied "elsewhere". The only elsewhere he could find in the overlay areas where this might apply is the Rural Recreational District. This is mostly Town-owned property or Land Trust property.

(2)(d): The term already discussed (noncommercial), as well as the term contiguous and continuous need to be better defined. If they mean clear-cut by continuous clearing then that is what they mean. Perhaps this was intended to apply to a wood yard, but it isn't clear.

(2)(e): There is a definition in the Ordinance for "Sustained slopes" which means over 75' at the same slope – this should be made consistent.

(2)(f): He has had to apply this standard in the past and it is not easy to do. Somehow this needs to be rethought so it is easier to apply.

Mr. Sargent asked if this would impact the proposed wind towers on Ragged Mountain. Mr. Nims replied that it would, but that from what he understands, those towers are to be over the line in Rockport so it wouldn't apply. What about the proposed new ski lift?

(2)(f): The 75% of the tree canopy standard would be very difficult to apply. Mr. Householder noted that the height of the canopy constantly changes. Every single tree would have to be measured in order to get the percentage.

(2)(g): Some decisions on "blending in" are hard to make.

Mr. Nims will try to arrange for a forester at one of the next two meetings.

Mr. Sargent asked if the Town's Tree Warden (Bart Wood) had anything to add to this discussion. Mr. Nims suggested that his experience with forestry might be helpful.

6. Possible amendments for June:

The on-going amendment list was distributed with Mr. Nims recent additions included. Those new additions include:

#11: Parking for seasonal seats: Some restaurants have summer-time only seating that increases their seating capacity (decks and patios). Should there be some adjustment made to the parking requirement when these seats are only seasonal? Right now a full parking space for the entire year is required based on this capacity. Perhaps the Parking Trust fund could be a reduced fee for the partial year – it would be a help to the businesses. Mr. Sargent noted that not only do they have more customers but more employees.

#12: Snack bars (like at Beloins) have their menu on a board above the window – technically this does not meet the sign requirement which limits to 2 SF at the door – this is not enough. Perhaps the sign committee would like to reconvene and work on this. Ms. MacKinnon would like to do a little more with signs to liberalize the ordinance a little more. The requested changes to the directional signs have been made with a few alterations from the proofs. He will show these to the two Sign Committee members. Ms. MacKinnon noted that the sign on the Brace Building does not have enough contrast and is up too high. Mr. Nims informed them that the initial project went over budget with the overage approved by the Town Manager. There is no money left to make further changes. The sign on Rock Brook has not been moved as requested – the new location to be the original chosen by the Police Chief. The Sign Committee will reconvene next week to work on these issues.

#13: Combined fast food and sit down restaurants: In the Downtown District you can have a sit down restaurant with an unlimited number of seats, but fast food restaurants are limited to 20 seats. Sometimes there is a combo of full meals plus fast food seating. He suggests looking at whether or not the two uses can be allowed as long as the fast food seating does not exceed 20. The Ordinance also says that a sit down restaurant should have no fast food or over the counter. Technically someone can't call a sit down and ask for food to go, but this is done all the time.

The Board will discuss a priorities list in September.

Mr. Householder asked Ms. Dodge if she had spoken to anyone on Historic Resources about the Historic District Design Standards project. Ms. Dodge replied, but her comments were, on the whole, unintelligible. The next meeting of the Committee will be in the Conference Room at 4:00 on the 10th and any information that can be gotten to the new Chair before then would be helpful.

Gateway 1:

There is a new, and lengthy, Gateway 1 Agreement to form the Inter-local governing body. The Corridor Coalition Inter-local Agreement is a legally binding document, and Mr. Nims and Bill Kelly have been through the document and have common concerns.

Mr. Nims' concerns:

Land Use Planning: To monitor and evaluate the progress of eligible communities and agencies in implementing the Land Use recommendations in the Plan, and to provide to the State and Local Governments annual reports concerning such progress. This is the mechanism to evaluate the towns' requirements.

Then it says: Municipal evaluations would include, but not be limited to:

1. Progress in updating Comprehensive Plans, Zoning Ordinances, Subdivision and Site Plan Review Ordinances, Scenic Standards, and Access Management Standards as recommended in the Plan;

2. Implementation and enforcement of updated ordinances.

Mr. Nims does not see how Gateway can monitor enforcement of ordinances – or whether they even should. Part of the question is where they will get the staff to do this. Mr. Nims thinks they should strike monitoring enforcement right out of the document.

Ms. MacKinnon was led to believe initially that this would be a cooperative effort – now it seems it is not that there would be so much involvement. Mr. Householder asked what the penalties would be if you didn't comply. Mr. Nims believes it would be that you wouldn't get funding, and the document says that you could lose your voting rights in the coalition if you don't comply.

Based on the goals and strategies and principles of the Plan, to advise municipal planning or other applicative review boards on Subdivision and Site Plan applications effecting the functioning and visual quality of the Routes 1 and 90 corridors in the region.

This would require amendments to Subdivision and Site Plan to acknowledge this review and recommendations of Gateway 1 in the process. The Board doesn't have to act on the recommendations, but they will have to formally acknowledge the comments. The document goes on to talk about the notice required of towns for these applications. Mr. Sargent asked about the timeliness of these responses and the document says that towns can set the timeframes for these responses.

Budgets for the Gateway projects will be approved with a 60% vote of the membership. Bill Kelly thinks this is too low – it should be at least a 2/3's vote for financial agreements.

General Authorities:

In addition to the administrative powers and duties expressly provided for elsewhere in this agreement, and expect as limited herein, the Coalition shall have all such other power and duties as are reasonably required to allow it to carry out its intended functions and duties as authorized by this agreement. Among other things it may provide for staffing and the provision of other professional services in the manner that it deems appropriate within the funding limits of the organization.

Both Bill Kelly and Mr. Nims thought this was an overreach.

Mr. Kelly will be commenting separately.

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

Respectfully submitted as transcribed from audio tapes,

Jeanne Hollingsworth, Recording Secretary

Amend Article XII, Site Plan Review as follows:

Section 1. Purpose and Applicability

(8) Proposals under (1) and (2) above or proposals that include two or more of the following types of exterior renovations to a non-residential or multi-family building within a two-year period, in the B-1, B-TH or B-TR zoning districts:

- (a) façade
- (b) roof
- (c) siding
- (d) awnings
- (e) exterior lighting
- (f) historic or architectural details

Section 2. Procedures

(5) Within sixty (60) days after the date on which the site plan application first appears on the Planning Board agenda, the Board shall act to approve, approve with conditions, or disapprove the site plan application submitted or amended. The time limit for review may be extended by mutual agreement between the Planning Board and the applicant. During this sixty (60) day period, the Board may schedule an on-site visit.

- (a) In connection with the review, the Planning Board shall hold a Public Hearing within thirty (30) days after the site plan application first appears on the Planning Board agenda, however, the Planning Board may waive the public hearing for applications under Section 1, (8); the time limit for scheduling such public hearing may be extended by mutual agreement of the Planning Board and the applicant. Any mutual agreement for extension of the time for a public hearing or of the time for review set forth in Article XII, Section 2(5), shall be in writing, and signed by the Planning Board and the applicant or the applicant's agent.

Section 4. Supplemental Information

(4) In addition to the submission requirements above, applications for exterior renovations in the downtown as required in Section 1, (8), shall include the following, if applicable:

- (a) an elevation sketch of the proposed façade(s)
- (b) sample materials or cut sheets
- (c) digital color photos of the streetscape
- (d) renderings or photo simulations of the proposed exterior

- (e) photos of historic or architectural details

Section 6. Approval Criteria

(11) Design standards for new construction, additions or exterior renovations in the B-1, B-TH or B-TR Zoning Districts. The applicant is strongly encouraged to adhere to these standards, however, the decision of the Planning Board on these design standards shall be non-binding on the applicant.

The downtown area is a symbol of community economic health, local quality of life, pride, and community history. A thriving downtown preserves a sense of place and promotes the economic well-being of its residents. (Camden Comprehensive Plan – June, 14, 2005)

- (a) The wall of the building facing a street or the harbor shall be treated as a front façade and shall incorporate pedestrian-scale design features such as doors and windows to create a character that complements the overall visual character of the streetscape.
- (b) The roof shall be designed to maintain the overall visual character of the streetscape, to the extent practical.
- (c) Building scale should take into consideration the unique qualities and character of the surrounding area. Buildings should reduce their apparent bulk by dividing the building mass into several smaller-scaled components.
- (d) Siding should be visually compatible with other exterior finishes on the building and with those buildings to which it is visually related. Any quality material that simulates traditional features will be considered on a case-by-case basis.
- (e) Awnings shall complement the overall visual character of the district. Rigid metal or plastic awnings are prohibited.
- (f) Other than general lighting for the commercial space, there shall be no spot lights, flashing lights or strobe lights other than permitted lighting for signage.
- (g) Buildings with historic features or specific architectural details, shall preserve those features and details to the maximum extent feasible.

From: Paul Miller [mailto:Forester@fairpoint.net]
Sent: Thursday, July 08, 2010 10:43 AM
To: Jeff Nims
Cc: Howard Wright, Sr.
Subject: variance procedure

morning Jeff,

I've scanned other town zoning and have not found any high area zoning but I'm sure it's out there somewhere. I tried to access Camden zoning this morning but can't seem to get anything but the comprehensive plan.

Basically what Howard and I are asking for is a variance procedure that would allow us to request from the town, planning board or CEO or both, to exceed the written standard.

Personally I don't believe a cookie cutter approach is acceptable and believe each case should succeed or fail on its own merits.

This is all taken from existing ordinances and I just copied it in. Therefore I suggest something like this and similar to the shoreland variance;

Variance procedure high areas:

Timber harvesting operations exceeding the forty percent (40%) limitation in paragraph above, may be allowed by the Planning Board upon a clear showing; including a forest management plan and a harvest plan signed by a Maine licensed professional forester; that such an exception is necessary for good forest management; that the need for a variance is due to the unique circumstances of the property and not to general conditions in the neighborhood; that the situation is not the result of action taken by the applicant ; and will be carried out in accordance with the purposes of this Ordinance.

The planning board will answer all appliclations within 30 days of receipt.

The Planning Board shall notify the Commissioner of the Department of Environmental Protection of each exception allowed, within fourteen (14) days of the Planning Board's decision. (i don't know if this statement fits this situation or not)

Thank you for your help and please reply that you have received this so i know,

paul

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