

CAMDEN PLANNING BOARD
Minutes of Meeting
July 21, 2010

PRESENT: Chair Chris MacLean; Members Richard Householder, Jan MacKinnon, and Lowrie Sargent; Alternate Members Sid Lindsley and Nancy McConnel; CEO Jeff Nims; and Select Board Liaison Deb Dodge

ABSENT: Member Kerry Sabanty

1. PUBLIC COMMENT:

Mary Barnard O'Connell: 42 High Street: Mrs. O'Connell reminded the Board that at the end of the approval process for Mountain Arrow Village Green Subdivision she had asked the Board for three things: (1) An Abutter's Handbook to help explain the subdivision review process; (2) An amendment to the Subdivision Ordinance that required that temporary roads be included on the Plan; and (3) That a proposed land swap involving subdivision property never be part of a subdivision approval. None of those things have been done. Meanwhile, she continues to have problems with this subdivision, and she is here this evening, with pictures to illustrate her concerns, to complain about various situations that have impacted her property.

- Trees along Mountain Arrow Drive: A crane damaged one of the O'Connell's trees - it was not treated for a month; roots of the O'Connell's trees were left exposed for two months; and their trees were cut without permission.
- Stone wall at Mountain Arrow Drive and Route 1: This wall remains as built even though the MDOT has found that it is illegal. What is the status of this wall?
- She discovered a sewer drain had been installed on her side of the property line without permission and without any notice that it had been done – this is trespassing. How does he (the developer) have the right to do this work on her property? Who gave him permission?
- She did note that the work done to the storm water drainage had taken care of previous flooding problems and was grateful for that change. But, there has been an open cover on one of the large storm drains for over a year. She is worried when her grandchildren come to visit – even though the drain is not on her property, they are children and this is nearby.

She believes that the owner is avoiding dealing with many issues and is simply paying fines instead of fixing things.

The Chair expressed sympathy for all that the O'Connell's have been through with the creation of this subdivision that surrounds them on three sides. He noted the Board's efforts in trying to find ways to address abutter's concerns, and the many opportunities people have to come before the Board to express these concerns during the approval process. The effort is to involve citizens at every opportunity as the Board works on issues that might impact them. Most of what Mrs. O'Connell has brought to the Board this evening would involve issues where the Board has no authority -- they are not able to issue stop sale or stop construction orders. Some of these problems may involve enforcement action by the Code Enforcement Officer, or they might require her having to take private action for injury or trespass for resolution. In any case, the Board is not able to become involved. Mr. MacLean did check with the CEO about the uncovered storm drain which had been reported by Mrs. O'Connell in May. Mr. Nims had spoken with the developer, Trygve Bratz, and will follow up again. Mr. Nims confirmed that the

Board had issued no further approvals to the Subdivision Plan, and Mr. Nims will check to see if the new storm drain (not sewer drain) on Mrs. O'Connell's property was on the approved Plan. Mrs. O'Connell thanked the Board for hearing her complaints.

2. MINUTES:

July 7, 2010:

Page 1:

Line 23: "farm was divided into eleven lots..."

Line 26: "associates of the ~~heir to~~ owner of the Ogier farm..."

Line 28: "and neither its' character,...has ~~not~~ changed much since..."

Line 46: "She is afraid that ~~if~~ many of the trees..."

Page 2: Line 7: "will decide what to do if anything,"

Page 5: Beginning at Line 12: The Recording Secretary had mischaracterized the Gateway 1 "point system". The sentence now reads.

"You get one point if you simply address the requirement, two or three points depending on if, or how far, you go beyond the basic requirement and no points if you didn't address the issue at all."

MOTION by Mr. MacLean seconded by Mr. Householder to approve the Minutes of July 7, 2010 with corrections.

VOTE: 6-0-0

The Chair noted that his vote was cast to pertain only to the portion of the minutes that did not concern the Conference Center proposal. Although the proposal has been withdrawn since the July 7 meeting, and is not before the Board at this point in time, he continued to recuse himself from any business before the Board involving this issue.

3. DISCUSSION:

1. *Site Plan Review pre-applications:* There were none.
2. *Minor Field Adjustments:* There were none.
3. *High Elevation Forestry:*

Howard Wright is before the Board asking for an amendment to the Zoning Ordinance restrictions on cutting at elevations above 500). He is assisted by Paul Miller, his forester, who had drafted language for the proposed amendment. (Copy of Mr. Miller's proposal attached.)

The Chair asked the CEO for an update: Mr. Nims replied that he had agreed at the previous meeting to take Mr. Miller's proposal and work on language that would fit into the Ordinance. He received the proposal, but before he could review this against all the standards that might be implicated by this change, he needed more information. He emailed Mr. Miller asking several questions about Mr. Wright's actual plan for cutting. He wanted to make sure that any language drafted would allow Mr. Wright to go forward without getting tripped up by another standard that hadn't been addressed – the more specific information he had the better. However, Mr. Wright did not respond to Mr. Nims' questions, instead Mr. Wright's attorney wrote to Mr. Nims saying that the CEO's questions were premature, and that the amendment proposal was not specific to Mr. Wright. Without the information to review the standards, Mr. Nims determined it was not practical to go forward with his amendment language.

Mr. Nims informed the Board that he had contacted Coastal Mountains Land Trust (CMLT) and abutter Mary Bok to let them know of the proposal

Mr. Wright stated that if he had understood the reasons for Mr. Nims' questions were to aid him in "wordsmithing" the language of the amendment, he would have answered the questions. He went over his history with this proposal: In June of 2008 he was before the Board hoping to get on the November 2008 ballot – that didn't work out and he has kept on trying to get this proposal underway ever since. The Chair noted that in order to move forward to a November vote the Board would have to have final language before them this evening to be approved to send to Public Hearing in August. He outlined for Mr. Wright his opinion, that by going to his lawyer instead of responding to Mr. Nims' questions, Mr. Wright himself had delayed the process and kept it from going forward at this time. He asked Mr. Wright why it was that he simply didn't pick up the phone and speak with Mr. Nims' so he could understand the reasons for the questions. Mr. Wright replied that he was in his attorney's office when the legal assistant placed a call to Mr. Nims. Mr. Nims replied that he never spoke to anyone regarding his questions, and that all of the emails back and forth with the attorney's office had to do with Mr. Wright's concern about the possibility that CMLT had a financial relationship with the Town. If so, the resulting conflict of interest should prevent CMLT from being involved in the amendment process. The legal assistant, if Mr. Nims recalls correctly, simply called to ask what the upcoming meeting was about and reiterated the concerns regarding CMLT.

The Chair asked Board members how they felt about going forward with the amendment this evening without Mr. Nims' language:

Mr. Lindsley: They have a draft from Mr. Miller – why not consider it? Mr. Nims replied that Mr. Miller's proposal is presented as a variance, and variances are controlled by specific State standards that are very strict and very hard to meet.

Mr. Sargent: He believes the issue is relatively straight forward: Due to special circumstances can we harvest more timber? He thinks they should continue discussing the issue.

Ms. MacKinnon: She didn't think this would be a variance situation, but an exception which provided for "extraordinary circumstances". To ensure that the work was necessary and would be done correctly, the Board had indicated they wanted to see a proposal with a management plan and harvest plan prepared by a licensed forester. She didn't think the Board's job would be too complicated and wanted to continue as well.

Mr. Nims replied that he disagreed. He thinks the whole section needs work. For example – only 7500 SF of "continuous clearing" is permitted – what does continuous mean – it is not defined? At what point does the timber harvesting become commercial? There are many ambiguities that need to be addressed. Mr. Nims reminded the Board that the High Elevation District is an overlay that carries special constraints, and this needs to be a factor in making any changes. He feels the Board needs to look at the whole ordinance.

Scott Dickerson, Executive Director, CMLT: The organization is an abutter, but he is not here to comment on the particular proposal, only to offer the Board CMLT's perspective on the general importance of making decisions in the High Elevation District. This overlay is there because of the level of public interest in protecting the area – proposals for amendments to this section require an extraordinary level of review. There is currently no process for granting exceptions to the standards here, and it is not common to do so in protected overlay districts. The Chair

responded that sometimes a higher standard of showing might be required – or perhaps a higher vote than a simple majority.

Mr. Dickerson outlined why this particular area – the area of Bald and Ragged Mountains that includes Mr. Wright’s property -- is so special:

- The area has scenic value – both to look at and look from. The viewscape from the mountains themselves rival that of the view from Mt. Battie, and with the many trails that cross the area there is high visual accessibility.
- The Maine Natural Areas Program has classified this area as important because of the large area of un-fragmented high terrain in its natural state.
- The Department of Inland Fisheries and Wildlife has classified this as a focus area for plant and wildlife protection. It is 3500 acres of undeveloped land with special communities of plant life found only at a higher elevation, there are deer wintering yards and the Peregrine falcons, known to be nesting in the Camden Hills, surely include this in their hunting territory.

CMLT has been working to secure lands in this area to further all these interests, especially the ever-expanding trails systems that continue to improve access to the area.

The areas surrounding the land where Mr. Wright wants to cut were heavily logged 20 – 30 years ago, and the ruts in the logging roads are now cut to 6” deep with erosion – they are permanent channels now. The soils are thin to bedrock and trees are frequently damaged by winds and storms. Many of the trees themselves are not valuable – they are mostly scrub trees up that high – and it is usually not economically feasible to log.

Mr. Dickerson stated for the record that CMLT receives no financial support from the Town. Mr. Lindsley asked about the piece of property they were given by the Town. Mr. Dickerson replied that CMLT was given rights for the river walk easement – but that is not considered of monetary value by tax accountants. The holder of an easement incurs life-long liability for care and these kinds of easements are generally considered a wash as a gift.

Ms. McConnel believes that the Town is pushing for more development and for more preservation at the same time – but not for total preservation. She believes property owners have rights to manage their property to get the best use without harming the environment. Forestry management – cutting when necessary – is good for wildlife.

Mary Bok, Gideon Bok (manger of the Bok farm), and Tom Karod, Attorney: Mr. Wright holds an easement over the Bok property and the Bok’s deed from 1892 describes the easement only “as now used” to take wood - but there is no other delineation. It is a general easement and not specifically described. The Boks are worried that if Mr. Wright is permitted to take more wood than is now allowed, there will have to be a woods road built and it will have to traverse steep slopes somehow or other. They own 180 – 200 acres here, but much of it is more than a 25% slope. Mrs. Bok’s forester predicts terrible damage to the Bok property by erosion if a road is put through. The forester will speak later, but the Board should be aware that the Boks have successfully managed their woodlots in the same steep area without doing damage and while complying with the regulations. To access the steeper areas they have used horses in the past, and they are very satisfied with the results.

Mr. Karod spoke to the Ordinance (Article X Part 1 Section 1) and his reading that the intent of voters was to keep development from this area, including not permitting commercial forestry. If

the variance proposal is passed, the code will open a back door to commercial clear-cutting. Mr. Nims is correct, the code needs revisiting because now it permits commercial timber harvesting.

He noted that in the Ordinance slopes of 25% or more are restricted the most intensely – there can be no roads. Yet there are no road construction standards to address situations where road construction is allowed. He suggests that whenever a road in this area is over 500' in length that the Private Way Standard be applied. Mr. Nims agreed that the only time the Private Way Ordinance is applied currently is in a residential setting, and not for commercial uses.

They don't understand why Mr. Wright is even writing a proposal for a variance – he has the right now to go to the ZBA for a variance, although they probably cannot meet the criteria. Mr. Nims agreed that Mr. Wright faces a high likelihood of failure before the ZBA – especially in meeting the first criterion for “undue hardship” and the requirement to prove that “the land in question cannot yield a reasonable return unless a variance is granted.” The Courts have set a very high bar to prove this by saying essentially, that if anything can be earned – even One dollar - that is a reasonable return. Mr. Wright is aware of this, and that is why they have come with this proposed amendment.

Mr. Lindsley: He asked the Boks if their land was where it should be forestry management-wise using horses to do the work, and the Boks both agreed the woodlots were in good shape. Mr. Lindsley wants to make sure that the proposal they hear will still protect the High Elevation areas. Ms. McConnel and Ms. MacKinnon are both familiar with using horses to work woodlots successfully.

Barrie Brusila: Consulting Forester for the Bok family for ten years: She spoke to the ambiguity in the ordinance – the wording could be made clearer if these changes are done right. There is a process for a variance in the Shoreland Zone – another overlay district – where cutting is allowed under certain conditions but landowners still have to meet erosion and water quality standards. She thinks something like this might be considered. She noted that clear cutting is one tool for foresters to use – but its use must be validated. She believes that commercial cutting should be permitted in the High Elevation Area as long as there are sufficient controls in place. One standard the Board should not include in any variance proposal is a road on a slope of 25% or more. Roads on slopes are where all of the problems come from, and the soils on slopes need all the protection from erosion they can get. She is happy to work with the Board on wording for the proposal is needed.

Mr. Lindsley asked if there is one time of year that is better than others to take this wood out. Ms. Brusila replied that there is really no good time – these soils are always fragile. It is best if the ground is dry and good if it is frozen – although snow-covered slopes would be treacherous. Mr. Miller replied that frozen ground in winter is the best time.

The Board briefly discussed the application of a Private Way to other uses – does it apply to a logging road? Mr. Householder believes the Board needs to review all the information they've received and decide which path to take – he recommends a Worksession. The Board discussed the next step in this process: Ms. MacKinnon thought that if the glitch in communications hadn't happened that the proposal could have been ready to go. Mr. Nims disagreed, saying that there are a number of problems that need to be resolved – he did not believe that it could have been made ready this evening to send forward. Mr. Sargent agreed, but said that they owe it to Mr. Wright to keep on top of this issue and not let it drop – Mr. Wright thanked them for that. Mr.

Sargent added that it was too bad that the parties had not talked about how Mr. Wright is going to get to his property, but that will be up to them to resolve.

4. *Revised Downtown Design Standards:*

There was no response from anyone connected with the Downtown Business Group regarding the redraft of the Ordinance.

MOTION by Mr. Householder seconded by Ms. MacKinnon to move the proposed amendment to Article XII to Public Hearing.

VOTE: 6-0-0

5. *Other Ordinance Amendments:*

MOTION by Mr. Lindsley seconded by Mr. Householder to send the slate of proposed ordinance amendments forward to Public Hearing.

VOTE: 6-0-0

6. *Gateway 1/Comp Plan amendments:* The proposed amendments are all done and are being reviewed by Stacy Benjamin as a courtesy – she has no authority to approve or disapprove them. That will be done by a committee that hasn't even formed yet. She will provide comments but no "grade". Mr. Nims recommends holding off on these amendments for November – there is no sense going to the voters if something might need changing once the grading has been done. But – they are ready and his replacement will not have to deal with this issue.

7. *Downtown Planning Group:* Mr. Nims informed the Board that Dan Stewart, a pathways specialist with DOT, has offered to go on a site walk in downtown Camden to discuss ideas that might qualify for the HUD grant program to improve the Downtown/Main Street. Ms. Dodge mentioned that Joanne Ball, the owner of the B&B, the Little Dream, has some ideas for improving crosswalks and controlling foot traffic so they will be used more by tourists - perhaps she could come on this site walk. The Board felt it was better to meet with the State first, then with Ms. Ball. Don White believes there could be anywhere from \$1M to \$2M available to corridor towns under a grant through Gateway 1 – he also believes it would be for planning and not for infrastructure. The idea is to focus on planning pathways and walkways in the core growth areas, and that fits Camden's Downtown projects.

8. *Other Business:* No volunteers have come forward from the Historic Resources Committee to offer help with the Historic Resources Design Standards project – their expertise is necessary. Perhaps different points of contact should be tried. Ms. Dodge attended the Committee's last meeting and this was not even mentioned – she will be happy to try to facilitate some communication.

Members asked Mr. Nims about the High Elevation Forestry proposal. He thinks that there are problems with the ordinance, but it is not something that he will be around to work on. He highly recommended Barry Brusila as a source of information. For years she has led the State's Shoreland training sessions for foresters and CEO's. She is very familiar with writing ordinances and would be a great asset.

There being no further business before the Board they adjourned at 7:20 pm

Respectfully submitted,
Jeanne Hollingsworth, Recording Secretary

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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