

**Town of Eliot
REGULAR PLANNING BOARD MEETING**

March 24th, 2009 7PM

ITEM 1 - ROLL CALL

Present: Steve Beckert – Chairman, Chris Pollard – Vice Chairman, Dutch Dunkelberger, Paul Burke, and Jeff Duncan – Alternate.

Absent: Dwight Snow.

Steve Beckert explained that Dwight Snow was still excused due to a class he had to take for his job. Jeff Duncan was appointed as a voting member for this meeting.

ITEM 2 – PLEDGE OF ALLEGIANCE

ITEM 3 – MOMENT OF SILENCE

ITEM 4 - REVIEW AND APPROVE MINUTES AND INVOICES AS NEEDED

None.

ITEM 5 - REVIEW OF "NOTICE OF DECISION" LETTERS, AS NEEDED

There were no notice of decision letters to review.

ITEM 6 - PUBLIC APPLICATIONS OR PLANNING BOARD BUSINESS TO BE CONSIDERED

A Public hearing - Chapter 35, Post-Construction Stormwater Management Ordinance of the Municipal Code of Ordinances of the Town of Eliot, Maine to establish methods for post-construction stormwater management in order to comply with the requirements of the federal Clean Water Act.

Steve Beckert explained that the proposed ordinance establishes methods for post construction stormwater management in order to comply with the Federal Clean Water Act and is meant to reduce the impact of post construction discharge of stormwater on waters of the state and reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution. He explained that the town has already adopted a similar ordinance that prohibits non stormwater discharges to the storm drainage system.

Dutch Dunkelberger stated that the biggest difference was that the new ordinance requires maintenance of stormwater structures after construction.

Public hearing opened.

Nancy Shapleigh, Sandy Hill Ln., asked if the adoption of this ordinance would add to the engineering costs of developing a single lot.

Dutch Dunkelberger stated that this ordinance would only affect developers disturbing an acre or more of land.

Bruce Trott, 971 Main St., asked how the term “urbanized area” is defined.

Dutch Dunkelberger stated that for the purposes of this ordinance the urbanized area would be the entire town.

Bruce Trott stated that under “Objectives” it says that “this ordinance seeks to meet the above purpose...” He stated that either the ordinance does or does not meet the purposes. Also, under “General Requirements” the ordinance says that no applicant for a building permit shall receive such permit unless the permitting authority determines that the applicant’s stormwater management plan meets the requirements of the ordinance. He stated that a fence requires a building permit. Would that mean someone putting a fence up would be required to meet the standards of this ordinance?

Chris Pollard stated that the ordinance only applies to those disturbing an acre or more of land.

Bruce Trott stated that throughout the ordinance he found many areas where the town has to consult with the town’s attorney. He asked if this was required under the Clean Water Act or if the town was just protecting themselves. He stated that he is concerned about the cost of implicating the town attorney so frequently. Also, under paragraph 6 on page 8 the ordinance references an annual fee and an initial fee. He asked who sets that fee and how it would be applied for inspections.

Steve Beckert stated that the initial fee will be set by the Planning Board at the time of approval.

Dutch Dunkelberger stated that the Board chose to leave the fee for maintenance after approval open.

Bruce Trott asked if the “person” referred to in paragraph 2 on page 4 referred to the violator.

Dutch Dunkelberger stated that when the code enforcement officer believes a person has violated the ordinance they become the “person.”

Steve Beckert stated that paragraph 1 refers to the “person”, which is carried over to the next paragraph.

Bruce Trott suggested that under “consent agreement” the Planning Board delete “code enforcement officer” because traditionally, a consent agreement can only be approved and received by the Board of Selectmen.

The Planning Board agreed.

Bruce Trott suggested that everything after the first paragraph under “Appeal of Notice of Violation” be deleted. It’s redundant and a reference to one place in the ordinance, Chapter 45, where it’s already spelled out would be more appropriate.

The Planning Board agreed.

Bruce Trott stated that under “Enforcement Measures” the proposed ordinance says that within 45 days of a decision of the Board of Appeals the code enforcement officer may recommend filing an enforcement action in a Maine court. He stated that the 45-day period is available for people to appeal to the courts so if the code so the town could theoretically pursue enforcement action before the applicant has the opportunity to appeal.

Steve Beckert stated that if that were the case then the municipality couldn’t enforcement the ordinance at all before the 45-day appeal period is up.

Bruce Trott stated that the town could get in trouble if enforcement measures are taken within that first 45 days.

Jeff Duncan stated that if the violator is in the process of an appeal he didn’t think any attorney would try to pursue further enforcement measures.

Steve Beckert asked Kate Pelletier to look into this and get back to the board.

Public hearing closed.

Steve Beckert asked the Board if they had any comments on the ordinance.

Chris Pollard suggested that paragraph 6 under “Performance Standards” refer back to Chapter 1 where the fee schedule is and say that the fee schedule is set by the Board of Selectmen for maintenance. He stated that the way it is now is too open ended.

The Planning Board agreed.

Chris Pollard also suggested that under “Notice of Violation” that “property owner” or something similar replace “person” to clarify.

Dutch Dunkelberger stated that “person” is defined in the definitions as “any individual, firm, corporation, municipality, quasi municipal corporation, state agency or federal agency or other legal entity which creates, initiates, originates or maintains a discharge of stormwater or a non stormwater discharge.”

The Board agreed to leave “person” in place.

Chris Pollard stated that he agreed with Bruce Trott about the 45-day appeal period. He stated that he would like some clarification as to what the attorney would be pursuing with that period should enforcement measures need to be taken.

Kate Pelletier stated that she would look into this and get back to the board.

B. Public hearing – Amendments to Chapter 1, General Provisions, Chapter 44, Shoreland Zoning, and the Official Eliot Zoning Map of the Municipal Code of Ordinances of the Town of Eliot, Maine to comply with the Mandatory Shoreland Zoning Act (Title 38 M.R.S.A sections 435-449).

Steve Beckert explained that the proposed Shoreland zoning regulations are a result of a state mandate and that the Planning Board made the decision to comply with the minimum requirements only. He stated that JT Lockman of Southern Maine Regional Planning Commission was present to discuss the changes in detail.

JT Lockman stated that he had been at SMRPC for 10 years now. Prior to that he was in the planner in two towns. He stated that he has worked on 15 Shoreland zoning updates and out of those 15 he has had two go completely through the process and get approved by the towns and the DEP. He stated that this process began for Eliot about a year and a half ago. Once the Planning Board made the decision not to add in any restrictions greater than the minimums prescribed by the DEP it was a pretty easy process. Mike Morse at the DEP read and reviewed 56 pages of text and found maybe 16 or 17 words that were not right. Those have been fixed and the text has now been approved by him. If this ordinance is approved at the town meeting in June Eliot will be in full compliance with the State regulations. He stated that 95% of the text was just adding phrases, redefining terms and restating or clarifying things. The last time the town went through this was in 1993 when there was another mandate to add Shoreland zoning standards. At that time there was a “high value” bird habitat around York Pond. Now those high value bird habitats are a ring of dark green shown on the proposed zoning map. Those areas are wetlands that the Department of Inland Fisheries and Wildlife have identified as inland wading bird and waterfowl habitats. If the DEP says that you have a moderate –high value wetland then you are supposed to keep development 250’ away. Other wetlands require a 75’ buffer. There are also regulations about tidal floodplains and steep slopes, which are not new to the ordinance. The dark green areas are new. He explained that he did not draw these buffers himself. The layers are taken directly from the Department of Inland Fisheries and Wildlife via an electronic file and are dropped on the town’s zoning map. Also, the positions of streams and wetlands were not something he drew in himself. This data came directly from the Department of Environmental Protection. He explained that once the new map is adopted you can put it up on the website, print it, play with layers, etc. He stated that he just wanted to reiterate that this is a statewide program and if the towns choose not to adopt the minimum requirements by July 1st, 2009 then the state will impose their own ordinances on the towns.

Public hearing opened.

Vicky Mills, Old Farm Ln., asked if the amount of land previously designated as being within the Shoreland zone had decreased at all.

JT Lockman stated that some areas previously considered wetlands may have been reclassified as a different type of wetland. For instance, in some areas that were

previously designated as Resource Protection are now shown to be within a FEMA floodplain. So, you still can't build there but it's because of a different reason.

Steve Beckert stated that if anything the new information is more accurate than the old Shoreland zoning map.

JT Lockman stated that was correct. In 1994 the National Wetlands Inventory was completed using color aerial photography. The Shoreland zoning information Eliot is currently using is based on black and white aerial photography taken in the 1970's. In general, the edges of wetlands are more accurate, but it's really the actual text of the ordinance that controls what you can and can't do. He stated that Kate Pelletier has a disk with the aerial photographs underneath the zoning information. People can uncheck the layers on the zoning map to reveal the aerial photographs to see how it all lines up.

Dutch Dunkelberger added that there are also better definitions of the different categories of wetlands.

JT Lockman stated that was correct. For example, areas with a 20% or greater slope are now identified on the map as well as forested wetlands over two acres that were considered Resource Protection but weren't shown on the old map.

Vicky Mills asked why the town only wanted to go with the minimum requirements.

Steve Beckert explained that the Planning Board felt that they had to weigh the State requirements versus landowner rights. It was the opinion of the Board that the minimum requirements were a good starting point. The Board did not want to hinder what a property owner could do with the land they own. He stated that at any point in time the town can revisit this issue and may decide that additional protection of wetlands is warranted sometime hence.

Chris Pollard added that there is also no evidence to suggest that the State minimums aren't already adequate to protect the resource.

Dutch Dunkelberger stated that the ordinance doesn't only apply to large land owners but also to existing homes. If the town further encroaches on a landowner's ability to build a deck or replace or rebuild their home the homeowner may find themselves quite limited with any further restrictions. If the minimums weren't good enough the State would not have approved them.

Jeff Duncan asked Vicky Mills what sort of enhancement to the ordinance she had in mind.

Vicky Mills stated that she is surprised where homes in new developments are cropping up. She could think of one that is literally in the middle of a swamp and it bothered her to see that.

Steve Beckert stated that he couldn't speak to where houses are creeping up without knowing the specifics, but generally speaking, regulations have changed over the years

and water tables have risen. Again, the Planning Board had to balance the need to protect resources versus homeowner rights.

Nancy Shapleigh, Sandy Hill Ln., stated that the Supreme Court has ruled that some of these restrictions were unlawful taking of private property. She stated that she isn't sure that hasn't already happened. She stated that it is nice that everyone wants to protect her land for her but she believed she had done a pretty good job of it herself. She stated that she is in favor of only pursuing the minimum requirements.

David Leavitt, 243 Goodwin Rd., asked what a property owner should do if they don't agree with the new zoning designation on his/her property. He asked if there was some sort of appeal process.

JT Lockman stated that he could give Kate Pelletier the name and phone number of someone at the Department of Inland Fisheries and Wildlife. People can ask questions there about why or how certain areas were designated.

David Leavitt asked if there was data available to back up these new designations.

JT Lockman stated that there was and he could connect Mr. Leavitt at the State level. He explained that the Planning Board asked him to do what they needed to do to comply with this program. If there is a dispute it can be taken up with Inland Fisheries and Wildlife.

Dutch Dunkelberger stated that he believed the Board had previously discussed the possibility of having a physical survey done to address any discrepancies.

JT Lockman agreed stating that the people at the State level are pretty approachable.

Dave Leavitt stated that in the past forested wetlands didn't have the buffer around them they do now. He stated that also, it appeared from the ordinance that you cannot count wetlands toward lot area.

JT Lockman stated that has always been the case. Areas of forested wetlands not in the Shoreland zone, however, can be counted toward lot size.

Dave Leavitt asked if you could count the Resource Protection zone around a wetland.

JT Lockman stated that within that 250' Resource Protection buffer you would have to stay 75' back. If it's a floodplain then you would need to be at an elevation 2' higher than that.

Dave Leavitt stated that a lot of people in town seem to want to protect every reptile, which would be fine if they were willing to pay for it. He stated that he could almost guarantee that the town would not vote to increase taxes in order to buy up and protect this land though.

Nancy Shapleigh stated that the state took 14 acres of her land in 1994. She stated that she was under the impression that if she ever wanted to develop any of the house lots

around the creek she would have lost 1 ¼ acres per lot, but that she could have counted that toward lot area. She asked if she was mistaken.

JT Lockman stated that most of Mrs. Shapleigh's land is back from the river. There is an open wetland at the edge of the wetland but at high tide there isn't any Resource Protection there. From the top of the bank back her land is in the Limited Residential Zone.

Nancy Shapleigh asked if this meant she was now out of the Resource Protection zone.

JT Lockman stated that was correct. Her land no longer met the criteria for the Resource Protection classification.

Dave Leavitt asked about lots that have already been laid out but not built on.

JT Lockman stated that the ordinance has new language that allows a special exception if the lot is already platted. The criteria for a special exception are on page 50 of the text under "Permits".

Dave Leavitt stated that about ½ of his son's lot would now be in the Resource Protection district and he hasn't built a house on it yet.

JT Lockman recommended that his son take out a building permit now before the town meeting and make a substantial start of construction or apply for a special exception.

Dave Leavitt asked what happens to homes that are already built and now have this Shoreland zone designation.

JT Lockman stated that when Inland Fisheries and Wildlife were trying to determine which areas were exempt from the dark green buffer they would look at what development had already happened there and if they saw any development in a 1,000' stretch of shore they took it out of Resource Protection and put it into Limited Residential.

Dave Leavitt asked about the area around Littlebrook pond where there are already homes in the areas now zoned Resource Protection.

JT Lockman stated that he is not going to try and defend Inland Fisheries and Wildlife data, but if the Resource Protection area goes through yards but not houses they are not too concerned. He stated that if Eliot decides they wanted to take that area out of Resource Protection or not adopt the map then the State will write a town a letter and impose their own restrictions. If there is an issue he suggested that Mr. Leavitt contact Inland Fisheries and Wildlife to resolve it.

Nancy Shapleigh asked if the town could put some sort of qualifier in the ordinance that if someone has a survey they could change the map.

JT Lockman stated that there is already language in the ordinance that basically says that reality rules over the map.

Bruce Trott stated that he would like to see Section 44-47 (Appeals) put in line with the recent law court decision of Vicky Mills v. Town of Eliot.

Steve Beckert asked if that case had been settled yet.

Bruce Trott stated that the judge's ruling regarding appeals stood regardless of whether or not the case had been settled.

Steve Beckert asked what relevance the law court decision had on this ordinance.

Bruce Trott stated that the decision tells the Board of Appeals how they will adjudicate.

JT Lockman stated that he would warn the Board that in a lot of areas the procedures for Shoreland zoning are different than in the rest of the ordinance. The Department has determined that they want code enforcement officer decisions in the Shoreland zone heard as de novo and Planning Board decisions as appellant. He stated that the DEP is trying to tighten up the procedure for appeals around the state.

Bruce Trott stated that Mike Morse has been notified of Board of Appeals' cases in the past and has never even attended one.

Chris Pollard stated that the town attorney will be reviewing the ordinance.

Beth Johnson asked what she would be allowed to do near a protected zone. She stated that she farms her land and asked if she would have to do anything differently now.

JT Lockman stated that it depends on whether it's a forested or open wetlands, its size, and whether it's categorized on the Shoreland zoning maps or not. He stated that she may need to hire a wetlands scientist to determine where the line falls on her property. For instance, if there is a wetland greater than 10 acres and open she may be limited and would be subject to the rules for agriculture in the new ordinance.

Beth Johnson stated that her land is now in Resource Protection with a 250' buffer.

JT Lockman stated that in that case she would have to consult the table of land uses and determine what uses are allowed under Resource Protection. If agriculture is allowed then she can consult the agriculture section of the Shoreland zoning ordinance on page 41.

Steve Beckert added that the agriculture standards say that operations in existence on the effective date of this chapter and not in conformance with the provisions may be maintained.

Public hearing closed.

Steve Beckert stated that the Board would take the comments for each ordinance into consideration and re-adourn on April 7th to finalize them.

ITEM 7 - ACTION ITEM LIST

None.

ITEM 8 – CORRESPONDENCE, OTHER AS NEEDED

None.

ITEM 9 - SET AGENDA AND DATE FOR NEXT MEETING

The next Planning Board meeting was scheduled for April 7th, 2009.

ITEM 10 – ADJOURN

MOTION:

Chris Pollard made the motion to adjourn at 8:35 PM.
Dutch Dunkelberger seconded the motion.

Vote: 4-0, Chair concurs.

Stephen Beckert, Chairman

Date approved: _____

Respectfully submitted,

Kate Pelletier, Recording Secretary