

ITEM 1 - ROLL CALL

Present: Steve Beckert – Chairman, Jeff Duncan – Vice Chairman, Dennis Lentz, Larry Bouchard, and Greg Whalen.

ITEM 2 – PLEDGE OF ALLEGIANCE

ITEM 3 – MOMENT OF SILENCE

ITEM 4 - REVIEW AND APPROVE MINUTES AND INVOICES AS NEEDED

There were no minutes to review.

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

There were no decision letters to review.

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

A. 10-minute public input session

Public input session opened.

No comments.

Public input session closed.

B. Joint workshop with the Eliot Planning Board, Eliot Conservation Commission, and the State of Maine Department of Inland Fisheries & Wildlife to discuss the State of Maine rule change that no longer requires wetlands rated as moderate or high value waterfowl and wading bird habitats to be classified as a Resource Protection Shoreland Zoning district.

Steve Beckert stated that Steve Walker of the Department of Inland Fisheries and Wildlife was present to discuss the State's role in the regulation of wetlands and wildlife habitats within them.

Steve Walker of the State of Maine Department of Inland Fisheries & Wildlife stated that in Eliot, wetlands are regulated by the Department of Environmental Protection (MDEP), Army Corps of Engineers and the Town of Eliot. In terms of how wetland regulation is done, the bulk of it is done by MDEP through a general permit agreement with the Army Corps of Engineers. The administration of these regulations is done through the Natural Resource Protection Act (NRPA) or through local Shoreland zoning. The Natural

Resource Protection Act applies to all wetlands in Maine regardless of type or size. It provides a one-time impact to landowners of 4,300 sq. ft. Through the rulemaking process, 4,300 sq. ft. was determined to be an adequate size for a house, garage, driveway, etc. This exemption applies as long as the impact is not located within a wetland of special significance and must be applied to the project as a whole as opposed to, for example, each lot within a newly created subdivision. Wetlands of special significance include all coastal wetlands and great ponds, and all freshwater wetlands that are critically imperiled, subject to flooding, containing at least 20,000 sq. ft. of open water, aquatic vegetation or emergent marsh vegetation; peatlands; freshwater wetlands located within 250' of GPA-classified lakes and ponds, within 25' of a river, brook or stream, or within 250' of a coastal wetland; freshwater wetlands regulated under local Shoreland zoning ordinances; and the primary focus of tonight's discussion, freshwater wetlands containing wildlife habitats of special significance. He stated that disturbances occurring in any of these cases require permitting and a 75' setback under current regulations. Regarding significant wildlife habitat, MDEP has designated deer wintering areas, significant vernal pools, tidal waterfowl and wading bird habitats, which are salt marshes without any upland buffer, and inland waterfowl and wading bird habitats, which are mapped and valued by the Department of Inland Fisheries & Wildlife based on amount of open water, amount of emergent vegetation, size and other factors. Inland waterfowl and wading bird habitats and their associated wetlands are regulated by MDEP and require a 250' buffer, which mirrors the Town of Eliot's regulations for high to moderate value habitats. Last session, the legislature changed the rules so owners of undeveloped lots can apply for a Permit by Rule (PBR), a fairly simple process that reduces that 250' setback to 150' from the edge of the open water wetland.

Jeff Duncan asked Steve Walker to explain what is included under the term "construction" and whether or not that would include harvesting timber or tilling land.

Steve Walker stated that there are exemptions for agricultural and forestry uses. The 250' setback is for a new structure only. For previously developed lots where there is already a structure in place, the homeowner can apply for a PBR to expand by up to 10%, even if it is already non-conforming. The Town of Eliot has chosen to regulate through Shoreland zoning the same habitat polygons the State regulates, but has the ability to trim out certain things like previously developed areas. The Town has a little more flexibility but in essence, they are regulating the same habitats as MDEP. Last session, the legislature determined that Shoreland zoning rules are fairly rigid. Beyond the allowances he just discussed, the 250' Resource Protection zone that was required on these habitats is difficult to vary, at least more so than it is with the DEP variance process. The landowner has to show there is really no alternative. Even though the high to moderate value inland waterfowl and wading bird habitats are classified as Resource Protection, there are allowances made for certain activities with Planning Board and/or Code Enforcement Officer approval. Each of the polygons that IF&W has mapped and given to MDEP for regulatory purposes are reflected in the Town's zoning ordinance. He stated that there are about 10 inland waterfowl and wading bird habitats in Eliot and only one is currently ranked as "high value." All of the others are considered "moderate

value” and through a PBR are eligible for the reduced 150’ setback he explained earlier. The Shoreland zoning laws no longer require moderate and high value inland waterfowl and wading bird habitats to be classified as Resource Protection locally. He stated that Shoreland zoning is a somewhat flexible tool and allows the Town to choose to incorporate other natural resources to the extent they see fit. The State legislature still includes moderate to high value habitats as a suggested addition to Shoreland zoning but it is no longer a requirement. From a scientific perspective, even a 250’ buffer is considered fairly minimal for habitat needs. When setbacks are reduced below 100’ significant changes in the aquatic invertebrate community are observed. Going up the taxa through birds, reptiles and amphibians, the buffer needs are much greater than even a 250’ buffer based on scientific review. He stated that Maine has not made a lot of the same mistakes as some states to the south so there is an opportunity to get the mix of planning and conservation right. He showed a map depicting brook trout habitats noting that there has been a significant contraction of the species in southern Maine due to lack of stream buffers, hanging culverts, changes in water quality, etc. He stated that it’s important for any town to consider buffers for not only the waterfowl and wading bird habitats, but also downstream and water quality impacts. Specific to wading birds, Eliot used to have four active heron rookeries. In the mid 1980’s there were 100 breeding pair among the four rookeries. Based on the last survey conducted in 2009, there are now less than 10 breeding pair.

Russ McMullen asked Steve Walker to identify which habitats he would consider “high value”.

Steve Walker stated that the habitat located south of the heath (Adlington swamp) was the only “high value” habitat and therefore, not eligible for the reduced 150’ setback.

Jeff Duncan asked what scenarios under the law would be eligible for the reduced 75’ setback mentioned earlier.

Steve Walker stated that by State law, all wetlands have a 250’ setback. Any disturbance below 250’ requires permitting, but that setback can be reduced to 150’ with a Permit by Rule. For the high value habitats only, a setback reduction would require full a full NRPA permit that shows avoidance minimization and potentially habitat mitigation. For all other wetlands and moderate value habitats, a reduced setback of 150’ would require a PBR, but to reduce it even further to 75’ would require a full NRPA permit unless there’s an existing structure, which would be eligible for reduced permitting for an expansion.

Jeff Duncan stated that if he understood correctly, even if the Town reduced the setback to 75’ the homeowner would still be subject to the same DEP permitting requirements and that the change would really have no bearing on that process.

Steve Walker stated that was correct.

Jeff Duncan asked if the Town was to keep the 250' setback and the DEP allowed a reduced setback of 150', would the Town then have to grant a variance locally?

Steve Beckert stated that the Town has the ability to be more stringent than the State requirements so the homeowner would need a variance from the Board of Appeals to allow anything less than the 250' setback regardless of what the State permits.

Steve Walker stated that would be case if these habitats were still structured under Resource Protection. Changing the designation to another Shoreland zone would allow

Connie Weeks stated that she had concerns about a reduced buffer causing potential water quality impacts. A good portion of the town exists with wells on land and asked if anyone knew how far away a well would need to be from a pollution source.

Steve Walker stated that he is not a water expert but that there are rules in place such as septic systems needing to be at least 100' from a well and rules pertaining to gas stations and underground storage tanks. Certainly the greater the buffer around the surface water resource, the greater the resiliency and quality of the water.

Jack Murphy, 5 Brixham Road, stated that while the maps used to delineate these wetlands are certainly a helpful tool, the fact of the matter is that these areas were classified with their various designations using primarily aerial photography as opposed to actual field surveys and can be wrong. He stated that he hoped the Town's ordinances included provisions for these instances and would allow actual field determinations as to the classification and boundaries of the resource to overrule the boundaries depicted on a map.

Steve Walker stated that most, if not all, mapped areas were indeed visited on the ground but they weren't mapped with a GPS receiver. A biologist likely visited them, assessed habitat quality and use and using aerial photos, boundaries were digitized and interspersions of emergent vegetation was assessed to rank them high or moderate. The Natural Resource Protection Act itself requires those measurements be done in the field. Typically, there's a clause in the zoning ordinance that talks about land/resources that are incorrectly mapped and the code enforcement officer's ability to allow field determinations to take precedent over what appears on a map. He stated that if anyone has an issue with how these habitats are mapped they can contact one of the regional offices and someone will come out and make a determination.

Connie Weeks asked why the heath had never been identified as a wetland.

Steve Walker stated that the heath probably wasn't identified as an inland waterfowl and wading bird habitat because of the lack of an open water component. Even though it's not considered a high value habitat, it would still certainly qualify as wetland of special significance both as a peatland and given the acreage of emergent vegetation and thus would be subject to the State 75' setback under the Natural Resource Protection Act.

Russ McMullen asked what the criteria would be for a reduction from the 250' setback. He stated that the church he attends is located within the Resource Protection zone and that they have lost about 70% of the land due to these restrictions. The church had plans to construct a new building and expand the parking lot, but they can't because of the 250' setback.

Steve Walker recommended that the boundaries of the wetland be field verified by someone at one of the regional offices.

Russ McMullen stated that he's had two people from MDEP visit the property who identified the area as being elevated approximately 10-12' above the actual wetland area and the soils are excellent. The problem he ran into was the cost of providing all of the additional work so they were just waiting to see what the Town was going to do. He asked what kind of relief they could ask for.

Steve Walker stated that he can still apply for a permit and the property is still eligible for some expansion under a Permit by Rule or greater expansion under a full NRPA permit. If the newly constructed building is associated with an existing use, he thought MDEP would be hard pressed to deny the request. He stated that he couldn't think of a single instance when MDEP denied work within the 250' buffer for an existing use. From a local standpoint, the fact that the property is in the Resource Protection district means the Town may have more restrictive standards than those of the States and recommended speaking with the code enforcement officer to determine what sort of criteria exists for granting variances locally.

Mike Moynahan asked what the State considers "existing development".

Steve Walker stated that "developed" means any structure or impervious surface. Any lot of record that existed prior to the change in Resource Protection in 2009 can be built on with code enforcement and/or Planning Board action even if it's wholly within the buffer.

Mike Moynahan stated that Robert Ducharme from MEDEP visited his property and indicated that a portion of his property did not meet the definition of a wading bird habitat so one half of what's classified as a great pond shouldn't be. He stated that the biologist would not come back to verify it or not and told him the mapping was done based on information provided by the Town of Eliot. He asked what he should do in that case.

Steve Walker stated that a great pond is defined as open water of 10 acres or more, but great ponds are regulated and mapped by MDEP. The wading bird and waterfowl habitats, which are the topic of tonight's discussion, are regulated and mapped by Inland Fisheries & Wildlife. If there were a wading bird and waterfowl habitat that happens to intersect with a great pond, IF&W would only identify and map those habitat areas as opposed to the entire great pond. He stated that for the IF&W side of things, if there is an area that needs to be revised it's just a matter of having their biologist out to

the property to verify the onsite conditions and then those changes would be incorporated.

Jennifer Fox asked if any changes to the setback would be voted on by Eliot voters.

Steve Beckert stated that any revisions to the Town's ordinances would require approval from the voters.

Mike Moynahan asked if there has been a proven decrease in wading birds and waterfowl since the Town of Eliot adopted Shoreland zoning standards in the 1980's that would justify why these setbacks have been increased over the years.

Steve Walker stated that the State's Wildlife Action Plan, which looks at 213 species of greatest conservation needs, concludes there have indeed been significant declines and that roughly 40% of them are directly tied to incremental losses of wetland habitat as a result of rural residential development. He stated that all of this information could be obtained through IF&W. He also stated that if anyone has any follow up questions after tonight's meeting they are more than welcome to contact him or IF&W at any time.

The Board thanked Steve Walker for his presentation and agreed to continue their discussion on the matter at a future meeting.

ITEM 7 - ACTION ITEM LIST

None.

ITEM 8 – CORRESPONDENCE, OTHER AS NEEDED

None.

ITEM 9 - SET AGENDA AND DATE FOR NEXT MEETING

The next regular Planning Board meeting was scheduled for Tuesday, March 19th, 2013.

ITEM 10 – ADJOURN

MOTION:

Greg Whalen made the motion to adjourn at 8:45 PM.

Larry Bouchard seconded the motion.

Vote: 4-0, Chair concurs.

Stephen Beckert, Chairman
Date approved: _____

Respectfully submitted,

Kate Pelletier, Recording Secretary