Town of Cape Elizabeth
Ordinance Committee Minutes

May 13, 2020 7:00 p.m. Remote meeting

As a result of the COVID-19 virus, the Ordinance Committee conducted the meeting via remote access as provided by Maine law. The Ordinance Committee used Zoom meeting to conduct the meeting and allowed the public to remotely attend and participate. Zoom allowed all Ordinance Committee members and members of the public to hear all discussion and hear votes, which were taken by roll call, as required by law. A meeting link was provided to access the meeting by video/audio.

Present: Penny Jordan, Chair
Jamie Garvin
Chris Straw

Staff: Maureen O'Meara, Town Planner

Councilor Penny Jordan called the meeting to order. The minutes of the April 29, 2020 meeting were approved 3-0.

Public Comment

No member of the public attended the meeting.

Nonconforming Lot Size (2019 Comprehensive Plan recommendation #30)

Councilor Jordan introduced the discussion. Councilor Straw disclosed that the amendments under consideration could include his lot. Committee members should proceed as they see fit as he is not in support of the amendments.

The committee revisited the map depicting potential lots in the 5,000 - 10,000 sq, ft. size (estimated 24) and Councilor Garvin observed that the amendment has limited scope. Ms. O'Meara emphasized that the actual number of lots that would be made buildable would need to go through the existing process.

Councilor Jordan reviewed the text amendment and the reference to the low-income affordability.

Councilor Garvin doesn't disagree with the affordability requirement, but his support for the amendment is separate from the affordability. Assuming 24 lots will become buildable, he supports the increase in municipal valuation and

potential net increase in tax revenue with low service cost impact. Even if the lots are not developed, the potential lot value increase may add 5 million in valuation. These lots are also in parts of town already developed.

Councilor Jordan finds the draft acceptable and is ready to move it to the Town Council.

Councilor Jordan moves to recommend the nonconforming lot amendment to the Town Council, seconded by Councilor Garvin. The motion passed 2-1 (Straw).

Ms. O'Meara will prepare a cover memo for Councilor Jordan to review for submission to the Town Council. The committee consensus is that the Town Council should review this in workshop prior to referring it to the Planning Board.

Nonconforming Lot Setbacks (2019 Comprehensive Plan recommendation #82)

Councilor Garvin said he does not support reducing setbacks at this time. Councilor Jordan concurred.

Councilor Jordan made a motion for the Town Council not to change setbacks and Councilor Straw seconded. The motion passed 3-0.

Pesticides (2019 Comprehensive Plan recommendation #51)

Councilor Jordan would like to start by discussing "what is the purpose and what problem we are trying to resolve?"

Councilor Garvin offered that pesticide use is part of town sustainability goals.

Councilor Jordan identifies the problem as a concern with health and safety, with pesticides on water resources, and referenced Falmouth's efforts.

Councilor Straw understands the rationale and desire for action, but he supports regional or state lead on pesticides. The town does not have the expertise. He does not want draconian measures and understands the desire to remove Japanese barberry and paint the remaining stem with an herbicide. There should be a reasonable approach by the state.

Councilor Jordan noted a universal pesticide bill has been considered by the state and not passed. There is concern with overreach. She also has concerns that if a pesticide ordinance is adopted, this is additional work for the Code Enforcement Officer.

Councilor Garvin agrees with public health concerns. He would like state leadership on this, but this makes sense for our region and we can be consistent with neighboring communities.

Councilor Straw noted that Scarborough had no ordinance, and we have received the South Portland ordinance.

Councilor Jordan questioned if there is a problem that needs to be solved. She understands concerns with abutting lawns treated with pesticides but many lawn services are now organic. Councilor Garvin clarified that "non-toxic" is not "organic."
Councilor Straw suggested the problem may be that, while he does not treat his lawn and it may be annoying when nearby lawns are treated, he is more concerned with algal blooms and water runoff into the bay. Would this action solve that problem? We don't have a lake problem, but do have the Spurwink River.

Councilor Garvin supports a slow, exploratory effort by the committee. He would like to hear presentations from groups like the Friends of Casco Bay, is and not looking to draft an ordinance at this time. Councilor Straw concurred.

Councilor Garvin would like to hear from Julie Rosenbach, South Portland Sustainability Coordinator. Harpswell is similar to Cape's relation to the ocean.

The committee consensus was to host some presenters at future meetings to educate the committee. A commercial applicator should be invited, as well as the Cumberland County Soil and Water Conservation District Healthy Yardscapes presenter, the town tree warden, a master gardener, the Cooperative Extension service, and someone from DEP. Presenters will be invited as schedule permits.

A speaker should be scheduled for the next meeting.

Next meeting

The next item in the Ordinance Committee work queue is a review of vernal pool regulations. The committee agreed to put this on the next committee meeting agenda. In preparation for the discussion, the committee would like a Fact Sheet, and a summary of existing state and local rules.

The next meeting of the committee will be held on Thursday, June 18, 2020, beginning at 7:00 p.m.

The meeting adjourned at 7:55 p.m.

Town of Cape Elizabeth
Ordinance Committee Minutes

August 11, 2020 7:00 p.m. Remote meeting

As a result of the COVID-19 virus, the Ordinance Committee conducted the meeting via remote access as provided by Maine law. The Ordinance Committee used Zoom meeting to conduct the meeting and allowed the public to remotely attend and participate. Zoom allowed all Ordinance Committee members and members of the public to hear all discussion and hear votes, which were taken by roll call, as required by law. A meeting link was provided to access the meeting by video/audio.

Present: Penny Jordan, Chair
Jamie Garvin
Chris Straw

Staff: Maureen O'Meara, Town Planner

Councilor Penny Jordan called the meeting to order. The minutes of the May 13, 2020 meeting were approved 3-0 with an amendment in the first paragraph under Nonconforming Lot Size that Councilor Straw disclosed that the amendment *could* include his lot.

Public Comment

No member of the public wished to speak.

Pesticides

Guest Speaker Ali Clift, Cumberland County Soil and Water Conservation District (CCSWCD), gave a presentation on the Healthy Yardscaping Program. She gave the 2 hour presentation in Cape Elizabeth to 25 attendees, mostly garden club members. The program promotes lawn care using environmental practices.

Pesticides used in yards can wash into waterways and continue to kill nontarget species. Herbicides target plants and insecticides target bugs. CCSWCD work with partners such as the Friends of Casco Bay, Maine Board of Pesticide Control, and Casco Bay Estuary Partnership.

Ali shared data collected from runoff from 13 neighborhoods into Casco Bay where pesticides were detected. Impacted species can include lobsters.

Fertilizers feature nitrogen and phosphorus. Excess nitrogen runoff can result in marine algal blooms and excess phosphorus runoff can result in freshwater algal blooms. Fertilizers should be used as needed and not on a strict schedule. Ways to address this include ordinances. State law prohibits fertilizer or pesticide use within 25' of a water body. Thirty municipalities have pesticide restrictions and 25% of them are in Cumberland County. The Yardscaping program includes outreach at events, workshops and point of sale partnerships that include a sticker for program compliant products.

Councilor Jordan asked if they work with landscaping companies. Ms. Clift gave the example of landscaping company employees attending program workshops. Residents who hire landscaping companies also ask that healthy yardscaping practices be used.

Ms. Clift continued that a healthy yard needs healthy soil, so the program emphasizes how to build and maintain a healthy soil. Treatments can actually bind up necessary nutrients and kill parts of the soil food web. Transitioning to a healthy yardscape can take several seasons. She recommends mowing to a minimum length of 3", only cutting 1/3 of the grass blade, making sure the blade is sharp, and composting clippings. Aeration, top dressing with compost, and watering wisely are recommended.

Councilor Garvin asked about the impact of the more dramatic rain events. Ms. Clift noted that June was an example of a dry month, followed by significant rain within 72 hours. A hard rain does not completely soak into the ground and erosion is a potential problem. USGS has the best data on this.

Ms. Clift recommends that soil be tested before fertilizing, so that only the fertilizer needed is applied. Soil test kits are available from CCSWCD, NRCS, the Cooperative Extension Service and others. She will provide help to understand the soil test results from the UMaine Orono soil lab and adjust recommendations for lawns, flower gardens, vegetable gardens, etc. Fertilizing should be done in early fall, and usually only a small amount of nitrogen is needed. She reviewed the advantages of using compost tea.

Councilor Jordan asked about towns that focus on landowner education and Ms. Clift said that Cape is doing that now. Councilor Jordan supports a resilient community producing food and Ms. Clift noted testing for lead in old neighborhoods and the small amount of topsoil in new neighborhoods.

Ms. Clift reviewed yard pests including pet (waste), ants, grubs, ticks, mosquitos and reducing lawn areas in favor of ground cover for shady areas, pollinator

gardens, wildflower meadows and rain gardens. Information is on the website, www.cumberlandswcd.org.

Councilor Jordan asked which communities emphasizing soil health are most advanced and Ms. Clift said it depended on the metric used. Gorham and Windham are encouraging agriculture. Falmouth has a new ordinance, and you can also look at Portland and South Portland's ordinances.

Councilor Garvin asked about Falmouth and grant funding. Ms. Clift said Falmouth is paying for water body testing. Ms. Clift said that yardscaping is promoted by the Interlocal Stormwater Working Group (ISWG) of which Cape is a member as part of its state/federal stormwater permit.

Councilor Garvin asked about yardscaping participants translating education into practice. Councilor Jordan asked about the stormwater permit data. Ms. Clift will provide recent permit data.

The committee discussed next steps. Councilor Jordan would like to define the problem and hear from Falmouth. Councilor Straw acknowledged a range from "natural" to highly maintained lawns in town. Councilor Garvin supports education, but learned from his experience with recycling that progress eventually plateaus on voluntary efforts. Some have an ingrained desire for how a property should look.

In response to a question, Ms. O'Meara said that most town water body testing data was funded by the town, the data is collected in the comp plan, and more data will require funding. The town has participated in a lot of Trout Brook improvements. Councilor Straw referenced the comp plan, Water Resources Chapter, and suggested the recommendations on gathering water quality data may need to come first.

Councilor Garvin said that Portland Water District testing shows that there is a runoff problem, and we can do more information gathering as there is not an inherent urgency. The committee agreed to invite additional speakers for the next meeting, including representatives from Falmouth, GPCOG, and Portland.

Councilor Garvin, following a conversation with a veterinarian, suggested there may be a negative impact on pet health and possible connection to an increase in cancers due to pesticide treatment of yards, athletic fields, etc.

Vernal Pools

Chair Jordan opened the meeting to public comment.

Suzanne McGinn, 1180 Shore Rd - Referring to the Pesticide presentation, she reported that EPA considers dog waste to be toxic. She supports stricter vernal pool regulations going forward and referenced her letter to the Town Council.

Public comment ended.

Councilor Straw referenced the information provided on state regulation of vernal pools. Seasonal factors should be taken into consideration and state regulations do not do that. The solution is to spell out that sampling cannot occur during an extended drought and the sampling period should be extended.

Councilor Jordan would like a vernal pool expert to attend the next meeting.

Councilor Straw wants to define the problem. How can we prevent this [possibly missing designation of a significant vernal pool] from happening. Vernal pools are scientifically complex and perhaps we should defer to the state.

Councilor Garvin would like more information about the specific example [Ocean House Commons project]. Was a mistake made on review? Is it a narrow miss or a bigger problem?

Councilor Straw suggested it was a loophole exposed. Councilor Garvin asked what change of conditions over time allow vernal pool reclassification? Councilor Straw would like to extend the duration for sampling.

Ms. O'Meara explained that current law has sampling taken in a limited few weeks in April/May. If you required that sampling has to occur over a longer period in dry conditions, it could be multiple years and concerns about a private property taking may be raised. We have an opportunity to invite Aram Calhoun, a well-respected expert, to attend a committee meeting.

Councilor Jordan would like to have a speaker and Councilor Straw acknowledged challenges with a narrow window in drought conditions.

Ms. O'Meara noted that the example provided met the rules in place, which do not include minimal rainfall levels. The committee agreed that they were looking forward and not because there was any violation.

Councilor Garvin agrees an expert speaker would help understand if the topic is based on a specific location/reaction or is this a wider problem? Are there problems elsewhere?

Councilor Straw is not aware of any other case. What if a property owner waits for a dry year to do the test? Would a wet year make the test positive? We should look at this potential loophole.

Councilor Garvin doubts people are taking a wait approach if they are pursuing development. With the rapid pace of land changes, at what point does the area lose the characteristics of a vernal pool.

The committee agreed to invite speakers for both topics on the same night, with potential meeting dates of August 26, August 27, September 2nd and September 3rd.

Public Comment

Suzanne McGinn - She referenced the history of the Ocean Commons project. In 2014, the owner did vernal pool sampling and later shared that with a potential buyer of the property. Shouldn't that have been in the real estate package? Shouldn't the new owner receive that information? She supports a requirement that an environmental consultant submit study results on private property to the town.

The meeting adjourned at 9:00 p.m.

Town of Cape Elizabeth
Ordinance Committee Minutes

September 2, 2020 7:00 p.m. Remote meeting

As a result of the COVID-19 virus, the Ordinance Committee conducted the meeting via remote access as provided by Maine law. The Ordinance Committee used Zoom meeting to conduct the meeting and allowed the public to remotely attend and participate. Zoom allowed all Ordinance Committee members and members of the public to hear all discussion and hear votes, which were taken by roll call, as required by law. A meeting link was provided to access the meeting by video/audio.

Present: Penny Jordan, Chair
Jamie Garvin
Chris Straw

Presenters: Aram Calhoun, Jess Jansujwicz, Jeff Rodriguez, Nancy Lightbody

Staff: Maureen O'Meara, Town Planner

Councilor Penny Jordan called the meeting to order. The minutes of the August 11, meeting were approved 3-0.

Public Comment

No members of the public were in attendance.

Pesticides

Chair Jordan thanked the speakers for the supporting information provided.

Before the presentation began, Councilor Straw identified his question of whether the state regulatory structure incorporated a variable for drier years? Should there be testing over a longer time frame or bar testing in dry years? Have we seen folks taking advantage of dry years to perform their testing? Is this a loophole or not a widespread incident?

Aram Calhoun, Professor of Wetland Ecology, Department of Wildlife, Fisheries and Conservation Biology, University of Maine at Orono, said it would not be easy to factor in dry seasons. Dry years tend to be identified in the late summer and vernal pool identification is done in the spring. The state law includes

intentional loopholes and a locally run program is best for meaningful vernal pool protection.

Chair Jordan asked Ms. Calhoun to identify the intentional loopholes. Ms. Calhoun will try to identify some as she makes her presentation, which is the creation of a vernal pool Special Area Management Plan (SAMP). You can visit the "Of pools and people" web page for more information.

Vernal pools are defined based on the type of breeders found. Vernal pools are ephemeral and may disappear by the end of the summer. They are less than 4,300 sq. ft in size and have no permanent inlet or outlet, and no bull frogs (which eat amphibians). Maine defines vernal pools based on the presence of the wood frog, spotted salamander or fairy shrimp.

Her organization researches what happens to juveniles when they leave the vernal pool. That can travel miles to other vernal pools to mix genes, and need a number of habitats. Radio transmitters were used to track how they move through neighborhoods, specifically a neighborhood in Mount Hope in 2017. They measured maximum travel distances by adults. The study included 817 salamanders, 1165 fairy shrimp, and 3018 wood frogs. The study demonstrates that the area upland of the vernal pool is critical habitat.

Under federal rules, an area 750' from the vernal pool is considered an "area of concern," but it is NOT a no-touch zone. They may not regulate the activity at all. Under state rules, 20% of vernal pools are protected by regulations, and subject to a 250' upland buffer. If the buffer area includes multiple property owners, the development potential is divided up among the property owners. No state permit has been denied because of a vernal pool. Animals go beyond, 250 and if the upland is compromised, the vernal pool function is compromised. For example, in Massachusetts, they have certified vernal pools and a 50' buffer, but there are no animals in the vernal pool.

The Army Corps of Engineers has a SAMP tool and this has just been approved for use in Maine to protect vernal pools. SAMPs have been used in other states, such as Texas, and Rhode Island to protect sensitive natural areas factoring in ecological and societal considerations.

The Maine SAMP was developed with input from the Army Corps, EPA, USFWS, 5 state agencies, 2 towns, and others. The development process took 7 years, included 100 meetings, and was a stakeholder driven process. SAMP improves on the current regulatory framework because the current system was not consistent for developers, did not protect the ecological system, and does not add responsibilities to state regulators, who already have too much work.

Vanessa Lavesque did her dissertation on the process used to create the Orono SAMP.

SAMP incorporates the following:

1. Voluntary to set up program
2. Alternative Regulatory Mitigation Tool
3. Existing regulatory rules
4. Adopted programs in Topsham and Orono; pending in Bangor, Kittery, Brunswick.

Why adopt a SAMP? The state and federal rules focus on the vernal pool footprint. When you protect the footprint but lose the surrounding habitat, the vernal pool becomes simply an urban wetland. One-size regulations don't meet the need of municipalities and property owners. To establish a SAMP, start with the Army Corps, then the Maine DEP, then municipal adoption of an enabling local ordinance and create an overlay zone. The state will need to delegate review authority to the town, but it can be partial delegation limited to vernal pools. The "Of pools and people" website includes template documents such as third party agreements and easements, and model ordinances. The Town will need to map vernal pools in the rural zones and can use aerial photography to do that.

How does the SAMP work once put in place? When development in a growth zone is proposed that impacts a vernal pool, a fee is paid and the impact is allowed. The fee is then used to purchase/protect 2 vernal pools in the rural zone. The fee is based on the value of the lot without a vernal pool. The fee is paid to a third party (it can't be held by the town). For every vernal pool fee paid, 2 vernal pools are protected.

Jess Jansujwicz, University of Maine at Orono, explained that setting up a program includes not just the target species, but also working with the town, real estate interests, and rural landowners. Lessons learned in Orono include identifying willing rural landowners. Many already have their land in conservation programs, such as Tree Growth. It was important to make the vernal pool easements more appealing and explaining the SAMP program. Programs can be tailored, such as allowing collecting firewood and limited tree harvesting. The best messenger to communicate with landowners are hosted events like bean suppers.

Councilor Straw observed that the SAMP mechanism may allow development where current regulations may not allow it. There is still the issue to identify where the vernal pool is and that is a labor intensive process.

Ms. Calhoun said that for vernal pools in growth zones, you don't need to wait until spring to map it because you can develop it and mitigate impact by paying the fee. Now, the fee goes to the state. With a SAMP, the fees stays in the town for 3 years. She is willing to help towns with mapping, and has already committed to 5 towns.

Councilor Straw said he does not want to lower the bar for development but rather create a bright line rule, and is ok with no construction.

Ms. Calhoun, as an ecologist, is happy every vernal pool in a growth zone triggers this. Now, only 20% of vernal pools trigger state and federal rules, so we only get mitigation for 20%. Wildlife habitat depends on a vernal pool linked with unfragmented forest.

Councilor Straw is concerned with the preservation and protection of open space. He does not want to create an incentive to wipe out open space in growth areas. Land will be protected in areas that wouldn't be developed anyway, or not for a long time.

Ms. Calhoun said preserved land must be at risk and not already conserved. Rural land may be the most at risk. Ms. Jansujwicz observed that current land owners may commit to preservation, but when they die there is no in perpetuity protection in place. Ms. Calhoun stated that one vernal pool surrounded by development is no longer functional.

Councilor Jordan summarized that you sacrifice the vernal pool for mitigation fees to spend on protecting a vernal pool with the wooded habitat. Ms. Calhoun followed up that in the growth zone the vernal pool is already sacrificed because the vernal pool ecosystem needs connection to the forest. Without that, you get an urban wetland with bullfrogs.

Councilor Straw stated that we have development zones abutting preserved open space. Ms. Calhoun asked if you could organize your development area so it is not adjacent to the open space?

Chair Jordan said that Cape has limited development now with plans to keep it rural. Open space is part of every development so how do we reconcile that with the wooded areas needed for vernal pools?

Ms. Calhoun referenced Orono and Topsham, where stakeholders reviewed maps on growth areas. In response to a question, Ms. O'Meara described the growth and rural areas in the 2019 comprehensive plan.

Councilor Straw said that growth areas run along roads and wrap open space areas. He might support a system where all land north of the Town Center was growth area and all land south of the Town Center is rural area. He would tailor this program to apply to the town center only and not use it in the northern section of town. Ms. Calhoun offered to help review maps.

Chair Jordan thanked the presenters and asked that the referenced templates be sent as soon as possible.

Pesticides

Chair Jordan welcomed Nancy Lightbody, Chair of the Falmouth Conservation Commission, to present on Falmouth's work with a pesticide ordinance.

Nancy Lightbody began that her presentation is from the conservation commission point of view and that the town's ordinance committee was very helpful. The Town Council 2016-2017 workplan included pesticides. There was concern with human exposure to pesticides, the water quality status of Highland Lake, other streams and Mussel Cove. Water quality testing shows that pesticides migrate off lawns and into stormwater and Casco Bay, harming crustaceans. She noted that South Portland has an ordinance. Is Cape starting, contemplating or adopting an ordinance?

Chair Jordan responded that the town is doing research, has heard from Ali Clift, Cumberland County Soil and Water Conservation District (CCSWCD), and Falmouth is the first town we are hearing from.

Ms. Lightbody said that Falmouth had help from CCSWCD, Friends of Casco Bay, State Board of Pesticide Control, local scientists, the Portland Water District and Portland and South Portland. Thirty other Maine jurisdictions have adopted some kind of pesticide control. In 2017-2018, Falmouth met with stakeholders including residents, industry representatives from pest control and landscaping, nurseries, and school department (athletic fields). A collaborative approach will be more effective long term. They supported an education program, "lawns and lobsters," at the Portland Country Club, and learned from Bruce Taylor, University of Maine Professor about the impact of pesticides on humans/infants. CCSWCD hosted an event, "Where does the water go."

After 1.5 years and 6 ordinance drafts, the purpose of the ordinance concerns human health and also environmental impacts. They started with just pesticides but added in fertilizers, and included exemptions for products used to protect human health, utility lines, the Maine Turnpike Authority(MTA), invasives,

insect treatments where the pest exceeds control measures that are practical. For fertilizers, they want to collect and analyze soil samples and then add soil amendments only needed based on the soil samples. The fertilizer should be 50% slow release and done in spring or late fall. No fertilizing should be done in summer or dry conditions.

Ms. Lightbody emphasized the importance of education, as the carrot, and the ordinance, as the stick. Property owners should comply as much as licensed applicators. Falmouth hired a marketing professional and designed an education campaign, but plans changed due to the pandemic. The plan include a logo, signing a pledge of voluntary compliance, website information, condominium association and golf course awareness, speakers and workshops. She noted that Maine is one of 7 states that do not preempt towns to regulate pesticides.

Implementation will take time, but the ordinance took from the end of 2016-March, 2020. The ordinance committee wanted more information so the conservation committee revised the ordinance to regulate applicators.

Chair Jordan asked if the applicator registration was considered a duplication of the registration required by the state bureau?

Ms. Lightbody responded that the Bureau of Pesticide Control registers every year, but the application totals are not broken down by town. Falmouth wants to see if the ordinance meets the goals of less use and water quality improvements. The town ordinance is not duplication but rather receiving data the applicators already have. In response to the potential burden on MTA if all towns adopt the regulation, they were assigned a $50 fee. The final ordinance references a sole proprietor or business, but will need to be changed to "applicator."

Industry representatives wanted base line data collected before an ordinance was in place. Water quality testing is expensive, about $1,000 per sample to test for chemicals, less for fertilizers. Testing is not funded right now.

The Falmouth Ordinance Committee supported registering now and if less is applied, that still supports goals. The mission has to balance improving the environment and still supporting local business. All business are supposed to be registered, but not all are at this time. We are focusing on education for private property owners, and hope that they are asking for environmentally responsible treatments when hiring landscapers.

Chair Jordan said that it is easy to work with professional businesses to get them registered, but the challenge is private property owners applying treatments without professional knowledge.

Ms. Lightbody noted that they are asking businesses to display their Bureau of Pesticide Control (BPC) license number. There is a challenge balancing eradicating invasives and limiting chemicals. We exempt pesticide use to treat invasives. If we are funded to do baseline data, we would prioritize Casco Bay, our borders. Do we do multiple years v. multiple places?

We will reporting in January and evaluating the ordinance. It remains important to work with applicators. Most are ok with registering and will help with collating data.

Chair Jordan asked about the number of applicators? Ms. Lightbody said Falmouth has 19 registrations so far. There are many companies and individuals and some companies have not registered, so we will start with a low key reminder to register.

Chair Jordan asked about the Portland, South Portland direction? Ms. Lightbody said Falmouth learned a lot from them, borrowed from towns, noted that South Portland has the timed implementation of private owners and gold courses.

The committee likes this approach. We should copy Falmouth and collect data. The committee voted 3-0 to recommend a full discussion with the Town Council on the Falmouth approach of tracking commercial applicators before adopting restriction. The town can then review the volume and consider next steps. Application season ends soon and we can vote adoption soon after.

Councilor Garvin asked Ms. Lightbody about measures of effectiveness that property owners are more aware, etc. They are not yet measuring that. Councilor Garvin referenced his experience on the Recycling Committee where education reaches a point of diminishing returns.

Vernal Pools

The committee returned to its discussion of vernal pool regulations.

Chair Jordan noted the SAMP option is not a cookie cutter approach. Should the committee look more at it?

Councilor Garvin agreed the information was great. Do we have a pervasive issue to address or is this a 1 person/project issue?

Councilor Straw agreed and noted that this streamlines the development process. Growth zones wrap around Robinson Woods. This approach would have streamlined the development in the Town Center that triggered this review.

Chair Jordan noted that in other areas of town, such as Cross Hill, development happens in wooded areas and is the design of our town.

Councilor Straw speculated that if we could put all our development in the Town Center, perhaps we could support a bus line.

Chair Jordan concluded that there is not much development going on for this to be an issue. Is the Resource Protection Chart in the Zoning Ordinance fine as it is?

Councilor Straw doesn't like the current ordinance, but this solution is a bigger problem. There should be a state solution.

Councilor Garvin asked if this is a solution looking for a problem that doesn't match ours? It depends on which version of the facts you believe to determine if anything was circumvented.

Councilor Straw noted that with multiple tests, on any year there could be a change. The vernal pool test may have showed a transition to noncritical. He recommends that the Town Council consider this option the next time it revises the growth areas, and otherwise do nothing for now.

Chair Jordan is compensating for her bias, which is not to do anything. Vernal pools don't exist in perpetuity with climate change, etc. She supports Councilor Straw's motion.

Councilor Straw thinks this is a problem, but too big for the town to close the loophole. We are not very protective of the travel/web of life around vernal pools. We are doing a lot of development in town. We should focus our energies on protecting open space and this solution does not fit that.

The committee voted 3-0 to recommend to the Town Council not to take action at this time and revisit at a future date to the extent that comprehensive plan growth areas are changed or amended.

Next meeting

The next meeting will be held on Monday, October 5th at 7:00 p.m. The agenda will include review of fences. The meeting adjourned at 9:21 p.m.

MEMORANDUM

TO: Cape Elizabeth Town Council
FROM: Ordinance Committee
DATE: September 28, 2020
SUBJECT: Pesticide regulation

Introduction

At the October 16, 2019 meeting, the Town Council referred to the Ordinance Committee the following Comprehensive Plan Recommendation:

> #51 Consider town action to require residents to minimize pesticide use and take advantage of programs such as the Cumberland County Soil and Water Conservation District (CCSWCS) Healthy Yardscaping Initiative.

Committee review

The Ordinance Committee engaged in an information gathering program over three meetings, as follows:

May 13, 2020: The committee discussed the purpose of a local ordinance, existing state regulation, what other towns are doing and agreed to pursue a series of speakers to learn about options.

https://www.capeelizabeth.com/council_packets/2020/05-13-2020%20Ordinance%20Committee/Ord%20Comm%20Min%204-29-2020.pdf

August 5, 2020: The committee heard a presentation from Ali Clift, Cumberland County Soil and Water Conservation District (CCSWCD) about the Healthy Yardscaping program.

https://www.capeelizabeth.com/council_packets/2020/09-02-2020%20Ordinance%20Committee/Ord%20Comm%20Min%208-5-2020.pdf

September 2, 2020: The committee heard a presentation from Nancy Lightbody, Falmouth Conservation Commission Chair, about adoption and ongoing implementation of Falmouth's Pesticide Ordinance adopted in March, 2020.

https://www.capeelizabeth.com/council_packets/2020/10-05-2020%20Ordinance%20Committee/Ord%20min%209-2-2020.pdf

Ordinance elements to consider

The Ordinance Committee liked the approach in the Town of Falmouth's Pesticide and Fertilizer Ordinance (attached) and would like the Town Council to discuss next steps at a workshop. Features that the Ordinance Committee would recommend as a model for Cape Elizabeth include:

- Data driven. The ordinance requires that data which is already collected and submitted to the State Board of Pesticide Control (BPC) by professional landscapers also be submitted to the Town of Falmouth. The state does not process the data by town or neighborhood, and submission to the town may allow regulations to be tailored to local conditions. Falmouth has noted that once the reports are collected, assistance is still needed to interpret the information.

- Impacts on water quality. Falmouth's approach focuses on water quality. The town's original intent was to collect water samples to establish a baseline before regulations were implemented. Sampling has been put on hold due to funding limits. It should be noted that water sampling challenges include not just funding, but also decisions about where to collect samples, how often and what to test the samples for. Testing for chemicals runs about $1,000 per sample, less to test for fertilizers.

- Education. Falmouth also emphasized education as part of the ordinance implementation. Falmouth retained A marketing professional who prepared an education program to be supplemented with outreach events, however program rollout has been put on hold.

- Carrot v. stick. Falmouth is emphasizing more of cooperative approach to ordinance implementation rather that immediately moving to penalties for noncompliance.

Recommendation

The committee recommended, by a vote of 3-0, to send pesticide regulation back to the Town Council for discussion of adopting the Town of Falmouth's approach of tracking community application of pesticides and logging volume before adopting restrictions, and then consider additional steps.