

**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](http://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.