

MINUTES OF THE PLANNING BOARD
TOWN OF CAPE ELIZABETH

April 19, 2022

7:00 p.m.

Remote Meeting

Present:	James Huebener, Chair Daniel Bodenski Andrew Gilbert Jonathan Sahrbeck	Matthew Caton Derek LaValle Alton Palmer
----------	---	--

Also present was Maureen O'Meara, Town Planner.

CALL TO ORDER

Mr. Huebener called the meeting to order, then called for approval of the minutes of March 15, 2022. The minutes were approved as presented, 6-0. (Sahrbeck abstained)

OLD BUSINESS

498 Spurwink Ave CELT RP expansion - The Cape Elizabeth Land Trust is proposing to extend the boardwalks 300 linear feet in Runaway Farms, located at 498 Spurwink Ave (U43-8-5), resulting in 600 sq. ft. of wetland alteration, Sec. 19-8-3, Resource Protection Permit Public Hearing.

Ardath Dixon, CELT Stewardship Manager, showed the plan and said she had updated the numbers a little. They are doing this to reduce the wetland impact. She also showed the zoomed in maps. She spoke about the construction of the boardwalks.

Mr. Huebener opened the public hearing. No one came forward to speak, so the public hearing was closed.

The Board had no comments.

Mr. Sahrbeck made the following motion:

Findings of Fact

1. The Cape Elizabeth Land Trust is requesting a Resource Protection Permit to alter 600 sq. ft. of RP2 and RP2 wetland located at 498 Spurwink Ave/Runaway Farm to add boardwalks to trails, which requires a Resource Protection Permit under Sec. 19-8-3.
2. The proposed boardwalks will not materially obstruct the flow of surface or subsurface waters across or from the alteration area;
3. The proposed boardwalks will not impound surface waters or reduce the absorptive capacity of the alteration area so as to cause or increase the flooding of adjacent properties;

4. The proposed boardwalks will not increase the flow of surface waters across, or the discharge of surface waters from, the alteration area so as to threaten injury to the alteration area or to upstream and/or downstream lands by flooding, draining, erosion, sedimentation or otherwise;
5. The proposed boardwalks will not result in significant damage to spawning grounds or habitat for aquatic life, birds or other wildlife;
6. The proposed boardwalks will not pose problems related to the support of structures;
7. The proposed boardwalks will not be detrimental to aquifer recharge or the quantity or quality of groundwater;
8. The proposed boardwalks will not disturb coastal dunes or contiguous back dune areas;
9. The proposed boardwalks will maintain or improve ecological and aesthetic values;
10. The proposed boardwalk project is limited to trails and otherwise will maintain an adequate buffer area between the wetland and adjacent land uses;
11. The proposed boardwalks will be accomplished in conformance with the erosion prevention provisions of Environmental Quality Handbook Erosion and Sediment Control, published by the Maine Soil and Water Conservation Commission dated March, 1986, or subsequent revisions thereof;
12. The proposed boardwalks will be accomplished without discharging wastewater from buildings or from other construction into Wastewater Treatment Facilities in violation of Section 15-1-4 of the Sewage Ordinance; and
13. The proposed boardwalks are not located in a floodplain.
14. The application substantially complies with Sec. 19-8-3, Resource Protection Regulations.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Cape Elizabeth Land Trust (CELT) for a Resource Protection Permit to alter 600 sq. ft. of RP2 and RP2 wetland located at 498 Spurwink Ave/Runaway Farm to add boardwalks to trails be approved, subject to the following conditions:

1. That the plans and materials be revised to address the comments of the Town Engineer in his letter dated 4-11-2022.
2. That there be no installation on the site until the above condition is addressed.

Mr. Palmer seconded and the motion passed, 7-0.

Carr Woods Condominium Development - Andrew Carr is requesting Major Subdivision Review for creation of a single family lot and 18 condominiums and a Resource Protection Permit for alteration of 11,134 sq. ft. of wetland on combined lots located in the vicinity of 10 Deep Brook Rd (U6-91, 91A, 92, 94A, 95), Sec. 16-2-4, Major Subdivision Public Hearing and Sec. 19-8-3, Resource Protection Permit Public Hearing.

Jim Fisher and Bill Gerrish of Northeast Civil Solutions were here to present the project. Mr. Fisher said they have had many meetings with the town and with the abutters. This is the official submission and he showed the plan. It is a 14 acre site with the proposal for 18 new units plus Andrew's house. There will be 6 duplex units, one quadruplex, 2 single units and Andrew's house. It is a private road that will be 1800 ft. long. There will be 22 ft. width of paved road.

The traffic study shows the sight distances on Shore Road exceed the minimum requirements. There are open spaces throughout the development and they propose to connect to other trails. He said they exceed the minimum amount of open space. They are proposing heavy landscaping. They will preserve as many trees as they can. The wetlands have been delineated multiple times by different soil scientists and a high intensity mapping has been done. With the new plan, the impact on wetlands is significantly less than before. The drainage will be substantially improved.

Bill Gerrish, Project Engineer showed the plan and covered much of the same topics as Mr. Fisher did. The entrance road has changed since the previous plan. The utilities will all be underground, gas, electricity and telecommunications will be on one side of the road and sewer and stormdrains are in the road surface and water will be on the other side of the road. He spoke about the road grading and slopes on the driveways. There is a proposed retaining wall that will be vary in height up to 8 1/2 ft. high. He spoke about the stormwater drainage systems in depth. He showed the plans of the pre- development and post development drainage. He said the open space is about 49% of the area. Landscaping is intended to screen the abutters and to screen the road.

Mr. Huebener opened the public hearing with some ground rules for participation.

Andre Doucette, attorney, represents Sheila Wellehan of 24 Rocky Hill Road. Concerns that have been raised over a long period of time are not being met. The setbacks for the wetlands are not adequate, the bedrock has not been appropriately reviewed and erosion and pollution have not been properly addressed. He spoke about the retaining wall being 10 ft. tall. Open space is largely wetlands or bedrock. He is not pleased with the buffering.

Stephanie Austin of 1 Cedar Ledge Road is co president of the Casino Beach Association. Runoff is a concern for the Beach. She asks if there is still some drainage to Casino Beach. She read a letter from Beach Association outlining their concerns.

Brandon Mazer, attorney, represents Eric and Jennifer Johansson of 2 Rocky Hill Road. We are raising the same issues that have been ongoing the entire time the project has been proposed. The wetland delineation did not include as far offsite as needed. The bedrock has not been accurately shown on the plans. The building footprint of units 2-

5 is 8700 sq. ft which is more than the ordinance limit of 7500 sq. ft.. They echo the Casino Beach concerns.

Steve Knapp, Professional Wetland Scientist, said the large wetland in the center of the property goes off the parcel and might need more buffer. A letter from his firm, BRI, was submitted.

Lorel Wisniewski of 25 Littlejohn Road is directly behind proposed units 17 and 18. She is concerned about drainage onto her property and her neighbors property. We get runoff from the properties to the west of us. They have proposed an underdrain soil filter directly adjacent to my property. She said they need to consider the effects on the adjacent properties. The meetings with the abutters did not address our concerns. These large units are way too close to our property line.

Mylan Cohen of 21 Surf Road spoke about the storm runoff issues. He asked if there is any marine study of the additional freshwater runoff into Casino Beach. He would like to hear about the impact of additional runoff through that recent mitigation by the Portland Water District. He would like to hear more about the life span of the Bio Retention filters and who will be responsible to fix them. He also wants to hear about how this development works with the Shore Road renovation project.

Christine Collins of 16 Ivie Road is concerned that the Carr Woods project offers little relief to the housing shortage with a high cost to an already densely populated area. They call it Carr Woods, but they will denude the existing woods. It will exacerbate existing drainage issues as well as create other environmental concerns and congestion issues for an already densely populated area.

Nat Jordan of 6 Robinhood Road sympathizes with his neighbors, but there is a housing shortage. Abundant housing is needed for affordability. When you increase supply then the costs will fall. This project should go forward. Multiplex is better for the environment.

Laurel Labauve of 12 Littlejohn Road asked if blasting will be required to do this project.

Ben Austin of 28 Rocky Hill Road asked if they will clear cut. There are big trees right near his house and he worries about their stability if most of the trees are cut. All the abutters are opposed to the project. The goal here has been to maximize the number of units.

Randy Blake of 2 Ivie Road wanted to comment on the affordability. These units are not going to be affordable. The price is over \$1 million per unit. This project will not solve any of the affordable issues that the Cape has.

Cole Peters of 1 Ivie Road is concerned about the bedrock. He is also concerned about the variety of the stormwater measures being proposed. One of the underground features is over 200 ft. in length. They appear to be 3 1/2 ft. high. Is there an understanding of the depth of the bedrock in those locations, and how the excavation for the installation of these features can be achieved.

Katie Blackburn of 14 Rocky Hill Road said she has submitted a letter to the Planning Board that highlighted over 1200 ft. of bedrock that has not been Identified. She wonders what the recourse will be if the runoff impacts Plaisted Field, which is already a very wet locale for Little League events.

Elizabeth Wexler of 8 Surf Road spoke about the increased traffic that this development will cause. She wants to be sure that the assessments were done on the pre-pandemic, pre-Covid time. She wants a realistic picture of the traffic along Shore Road, and not during the past 2 years.

No one else indicated a desire to speak, so the public hearing was closed. Mr. Huebener said they have received many letters and the Board has read each one.

Mr. Fisher said the wetlands have been studied to death, and the same with the bedrock. Enough is enough. As for the buffering, there will be street trees and a considerable amount of buffering along the perimeter on both sides. He said they are working with the town about Casino Beach. It's a state law and a municipal law that the post construction scenario cannot exceed the pre-construction scenario. The drainage will be substantially improved. The collection systems of the property are designed to take the storm water and store it on site and release it at a considerably lesser rate than it is now. Vegetated filters take the pollutants and filter them.

There are no RP-1 wetlands on the site. The quad unit is there as a model and will be made smaller to comply with the town maximum. As for the drainage on an abutter's property, we cannot do anything about that, but we are improving the drainage. There may be a need to do some blasting of the ledge if they cannot crack the rock and take it away. We are not maximizing the units, we're building fewer than the maximum. These will be in the million dollar range because many of the homes in the area are in that range. The traffic was higher during Covid than it is at other periods of time.

Mr. Sahrbeck asked if they have changed the traffic study to reflect the change of the road location.

Mr. Fisher said they do not have a new report, but the traffic engineer said there will be no change in his conclusions.

In response to a question, Ms. O'Meara spoke about the wetlands. With an RP-2 wetland it doesn't matter how much wetland is offsite in relation to the regulations that apply. If you have an RP-1 wetland, you need an acre of contiguous very poorly drained soils to be considered an RP-1 wetland. Our third party consultant did not find an acre of very poorly drained soils in wetland D.

Mr. Gilbert said he was unaware that people from his company did some wetland delineation for an abutter. It's not anyone he works with. Is there any issue with his participation? He works for BRI.

Ms. O'Meara said that no matter what the board decides, it will likely be challenged. She suggested the Mr. Gilbert should not participate at this meeting and she will seek advice from the Town Attorney for the future and the board concurred.

Mr. Bodenski pointed out the letter from the Public Works Director about the stormwater in one location of the property. He also asked who will take care of the maintenance of the stormwater structures.

Mr. Gerrish responded to the first part of the question and said they will try to improve their 10 year and 25 year runoffs. We cannot do anything about the properties outside of our boundaries.

Mr. Fisher said the homeowners association is responsible for that maintenance. The town will hold an easement to check to see if everything is taken care of.

Mr. Caton asked about the pipe from Plaisted Park.

Mr. Gerrish said that pipe is not functioning well and they plan to replace it.

Mr. Palmer asked if they have reviewed the plans for the Shore Road improvements.

Mr. Gerrish said they have not.

Mr. Palmer said looking at those plans it seems there is not sufficient right of way along Shore Road to construct the proposed improvements.

A discussion between Mr. Fisher, Ms. O'Meara and Mr. Palmer took up that question and said the town and the developer are coordinating as the Shore Road project design evolves.

Mr. Palmer spoke about the triangle of land that's where the old post office was. Will it be conveyed to the abutter?

Mr. Fisher said they are in negotiations about that.

Mr. Palmer asked about the test pits and the bedrock. He also asked about the under drain filters and whether they are considered developed area. He asked if the open space calculations exclude developed areas? He would like a calculation of the open space if those were considered developed area.

Ms. O'Meara said there have been open spaces that have included stormwater management, but the Board will have to decide when the open space is more stormwater than open space.

Mr. Palmer would like to see the open space calculations without the stormwater management areas. Also, the area behind the retaining walls, is that included in open space? He would like to have a third party landscape architect review.

Mr. Huebener said he is not comfortable approving the project. He would like to have it tabled.

Mr. Sahrbeck agreed with Mr. Huebener.

Mr. Huebener had a question about the bedrock.

Mr. Palmer said the buffering is not adequate, so he would not approve it.

Mr. Fisher is against a third party landscape architect. They have already done an extensive planting plan. If we need more buffering, we can do that and we don't need a third party architect to do that. It's just another study upon study.

In response to question about why she has suggested a third party landscape review, Ms. O'Meara said she has told the developer multiple times that maples and oaks are not a species we allow to be planted, but oaks and maples are on the planting plan. She has called a different landscape architect to confirm for her that all white pines die from the bottom up. There is a note on the plan that they are not sure if they are going to be able to plant things because of the ledge conditions, and they will have to move things around. You need to have confidence that what you are proposing is going to work, although limited field changes are not unusual.

Barry Hosmer, Landscape Architect for the developer, said we know there's a lot of ledge out there. Test pits have not been done all over the slopes. I just don't know for sure where exactly everything will go. White pines do die up from the bottom as do all pine trees. We can't use hemlock, we can't use balsam fir and we can't use arborvitae. We are left with pines and spruces. We like to look at what is there and work with that. There are maples and oaks and birches there now.

Mr. Palmer said he would like to have a review of the buffering.

Mr. Sahrbeck said we have to be bound by the ordinance.

Mr. Caton asked if the third party opinion can be done without delay. The applicant is entitled to get a finalized opinion. He doesn't want another meeting with an open ended discussion. What will get us to a vote?

Ms. O'Meara said she has contacted a landscape architect and he can get this done so it will not delay the applicant.

Mr. Huebener noted the Town Engineer had a lot of comments on this.

Ms. O'Meara asked the developer, given the plan revisions needed, if the work could be completed this month given the expense incurred to resubmit plan sets for the meeting. The developer prefers June.

Mr. Bodenski made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Andrew Carr for Major Subdivision Review of Carr Woods, an 18 unit condominium project and 1 single family home lot and a Resource Protection Permit to alter 11,134 sq. ft. of RP2 wetland, located at 10 Deep Brook Rd, be tabled to the regular June 21, 2022 meeting of the Planning Board.

Mr. Palmer seconded the motion.

Mr. Caton asked if they should give feedback on what needs to be done before the next meeting. The board then gave a list of what they want to see before the applicant comes back: landscaping third party review, open space calculations, right of way dedication along Shore Road, resolution on the triangle between Deep Brook Road and the Lawrence property, Town Engineer's comments, updated traffic study, the first peer review that should be reflected in the application, the 2 year and 10 year storm calculations and the bedrock delineation.

The motion passed, 6-0.

Mr. Fisher said as far as the bedrock is concerned, we have reports from 2 licensed soil scientists, what more do we provide?

Mr. Huebener said it seems so obvious on the photos and it's not on the plan.

Mr. Bodenski left the meeting.

NEW BUSINESS

Wentworth Lodge Special Event Facility Site Plan renewal - The Sprague Corporation is requesting Site Plan Review of the Wentworth Lodge Special event facility located at 10 Winters Lane (R08-1), Sec. 19-9 Site Plan Completeness.

Trevor McCourt, Property Manager for the Sprague Corp. said this is a 3-year renewal of the events facility at 10 Winters Lane. He showed a plan of the property. The plan was approved in 2016 and renewed in 2019. The plan in 2022 does not seek any alterations. They hold wedding receptions, family reunions and corporate outings. They all take place in the existing field utilizing a temporary tent, portable bathrooms and a parking area with a capacity of 80 spaces. They can accommodate 275 people. 250 guests and 25 staff. Event season runs from June through October.

Vehicle access is on private roads. There is no proposed increase in stormwater. The proposed site will be served by a generator. The only exterior lighting is on the perimeter of the tents and the closest abutter is 150 ft. from the tent area. The noise level will be held to 55 decibels or below by 10 p.m. and 45 decibels at 7 a.m. They will hold no more than 12 events per calendar year.

Mr. Huebener opened the public comments period. No one indicated a desire to comment so the comment period was closed.

Mr. Caton asked about the 7 a.m. activities.

Mr. Palmer made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Sprague Corporation for the site plan review to operate a Special Event Facility at the Wentworth Lodge, located at 10 Winters Lane, be deemed complete.

Mr. Sahrbeck seconded and the motion passed, 6-0.

Mr. Sahrbeck said he was on the board when the original application was approved and the 3 year renewal was to see how things were going. He said it seems that they are following the rules and there are no complaints.

No one wanted a site walk.

Mr. Sahrbeck made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Sprague Corporation for the site plan review to operate a Special Event Facility at the Wentworth Lodge, located at 10 Winters Lane, be approved.

Mr. Gilbert seconded the motion and it passed, 6-0.

The Board voted unanimously to adjourn at 9:50p.m.

Respectfully submitted,

Hiromi Dolliver
Minutes Secretary