

**Planning Board Meeting - Minutes
Tuesday, May 19, 2009
Cumberland Town Hall
290 Tuttle Road, Cumberland, Maine
7:00 PM**

A. *Call to Order*

The meeting was called to order at 7:00 p.m.

B. *Roll Call*

Present: Bill Ward, Board Chair, Bill Richards, Vice-Chair, John Ferland, Bob Couillard, Chris Neagle, Pam Russell, Bob Vail

Staff: Carla Nixon, Town Planner, Pam Bosarge Board Clerk

C. *Approval of Minutes*

Mr. Richards moved approval of the minutes of April 21, 2009.

Mr. Couillard seconded.

VOTE: 5 in favor (Ward,
Richards, Ferland, Couillard,
Neagle)
2 abstain (Russell, Vail)

D. *Consent Calendar / Deminimus Change Approvals:*

There were no Consent Calendar Items.

E. *Hearings and Presentations:*

1. To Set Public Hearing Date of June 16, 2009 to review and make recommendations to the Town Council regarding the proposed Zoning Map Changes for Shoreland Zoning Resource Protection.

Mr. Ward stated as required by State Statute the Planning Board must set a public hearing date to review and make recommendations to the Town Council regarding the Resource Protection change to the Shoreland Zoning Map.

Mr. Neagle asked why the stream protection overlay did not cover the power lines in West Cumberland.

Mr. Longley explained this was a G.I.S. mapping issue, the stream protection zone still exists beneath the power lines.

Ms. Russell asked for clarification on the adoption of this map by July 1, 2009, if we didn't vote on the map until June 16th.

Ms. Nixon stated that July 1 is the target date; the State has no penalties for not meeting that date.

Mr. Longley stated there are approximately 500 Towns in Maine that need to adopt shoreland zoning by July 1, 2009, at the last count there were 200 Towns who still needed to adopt the

ordinance. The State is very busy and only a few will finish by that date, the State wants to hear that towns are working on the zoning.

Mr. Couillard asked for clarification on the changes to the Resource Protection Map, and asked why these changes had to be done.

Ms. Nixon stated the Resource Protection zone around Knight's Pond is being enlarged due to State classification changes. Ms. Nixon explained the State has provided model ordinances for Towns and municipalities to use to adopt the required standards. The Town of Cumberland has chosen the least restrictive version of the Ordinance that allows compliance with the State requirements.

Mr. Neagle moved to set a Public Hearing Date of June 16, 2009 to review and make recommendations to the Town Council regarding the proposed Zoning Map Changes for Shoreland Zoning Resource Protection.

Mr. Vail seconded.

VOTE: Unanimous

2. Public Hearing: To review and make recommendations to the Town Council on draft Text changes to Section 423 Shoreland Areas of the Zoning Ordinance.

Mr. Longley, Code Enforcement Officer gave a brief background history as follows: Shoreland Zoning was enacted by the State in the early to mid 1970s. It was a concept of regulating the first 75' from the high water mark. During the 80's and the large amount of shoreland growth, the State-mandated shoreland zoning was instituted to regulate 250' from the high water mark. The Town of Cumberland Ordinance was adopted in the early 90's. Over the last few years the State has worked through the process of updating a model ordinance. The Town is proposing to have the Shoreland Zoning be a stand alone Ordinance. This Ordinance is more comprehensive and longer than the previous Ordinance.

Mr. Longley presented a review of major differences. Included in your packets were a memo and a list of the significant changes in the guidelines. Mr. Longley stated he sees this as a training exercise, his job as Code Enforcement Officer is to help people fill out and obtain permits. He has been working with Ms. Nixon over the last several months on the draft ordinance dated 4/1/09. The review of the Model State Ordinance has taken the least restrictive approach. If the Town wished to regulate above and beyond the State requirements this and the council forum is the time to discuss that. He has heard from citizens that they want to meet the letter of the law, but not exceed it. As an example Mr. Longley reviewed a drawing of Knight's Pond; the Town of North Yarmouth regulates Knight's Pond as does Cumberland, we regulate the western boundary. There is a very steep slope, which is currently Resource Protection which goes back 250'. The left hand side has been determined by the State as High / Moderate wildlife habitat and wetlands, and the State has determined that area should be regulated. The entire area along Knight's Pond will be protected. Mr. Longley called North Yarmouth and was told they already protect 500' around the pond; North Yarmouth doubled the State requirement.

Mr. Vail asked if Mr. Knight's daughter decided to drain that pond would that change the zoning in the area.

Mr. Longley stated there is an outstanding question; these designations were done by Inland Fisheries and Wildlife in an office in Bangor using aerial photography. What they didn't know is that there is a manmade structure in or near Knight's Pond. The State has been requested to walk

the area, and they may change what is required to regulate. He anticipates the issue will be resolved prior to June 16th meeting.

Mr. Vail stated his reason for the question is will we impact negatively some of the surrounding property owners with the new zoning.

Mr. Longley reviewed the properties that would be impacted; Mr. Paynter, of 445 Greely Road is most impacted.

Mr. Longley reviewed a summary of some of the most significant amendments as follows:

1. "Notes" have been added to point out portions of the Guidelines that are optional rather than mandatory for local adoption.
2. The Guidelines include State-wide timber harvesting standards, as well as the various options that are available to municipalities. (Sections 15(0) and 15(0-1). The Town has decided to continue to monitor Timber Harvesting until the State is set up to take it over.
3. The creation of a new General Development II District that allows the same uses as the General Development I District, but with a 75' foot setback requirement, instead of 25 feet. (Section 9(A) (5).

The Town chose to not adopt any new General Development Districts.

4. All new foundations, including slabs and frost walls will trigger the "relocation to the greatest practical extent" provision. (Section 1(2) (1).
5. The expansion limitations for nonconforming structures will apply to tributary streams. (Section 12 (1) (a).
6. Requirements for replanting if vegetation is removed within the setback/buffer area in order to relocate a structure. (Section 12)(2)(a).
7. A reconstructed or replaced structure must meet the requirement fully, if practical. If the entire structure that was removed can fit outside the setback area, it must not be permitted to be replaced within the setback area. (Section 12)(C)(3).
8. The Resource Protection District criteria no longer reference the 1973 DIF & W wetland ratings. The Guidelines now reference the current ratings from DIF & W's GIS data layers. (Section 12(A) (1).

Mr. Longley stated this is the section that would affect Knight's Pond.

Mr. Richards asked if there was a definition for "if practical".

Mr. Longley stated he would check definitions from the State.

Mr. Neagle stated he didn't think it was defined.

9. Essential Services have been split into the following categories:
 - Roadside distribution lines
 - Non-roadside distribution lines involving ten poles or less
 - Non-roadside distribution lines involving more than ten poles
 - All other essential servicesPermit administration is more involved as one proceeds down the list above. (Section 14, Table of Land Uses)
10. Adjacent to "unstable" and "highly unstable" coastal bluffs as mapped by the Maine Geological Survey, the setback requirement for new principal structures shall be

measured from the top of the bluff, rather than from the coastal wetland. (Section 15(P) (1) (d).

Mr. Longley reviewed the map designating properties with unstable and highly unstable bluffs.

Mr. Ferland asked if there was an estimate of the number of properties affected.

Mr. Longley stated he didn't have a number, but our GIS map person was working on creating a map.

11. An allowance for a small storage shed within the setback area on certain shallow lots. (Section 15(P) (1) (d).
12. Allowance for low retaining walls within the setback area, but greater than 25 feet from the water, on legally existing cleared lots. (Section 15(P) (5).
13. The width of noncommercial piers and docks on inland waters is limited to no more than six feet. (Section 15(C) (4).
14. One individual private campsite per lot is permitted. (Section 15(E).
15. Pertaining to wastewater disposal, holding tanks are not allowed for first-time systems, even if a holding tank ordinance is adopted. Also, the clearing for the fill extension related to new subsurface disposal system can not extend closer than 75-feet to the water. (Section 15(K).
16. Clearing of Vegetation for Activities other than Timber Harvesting (Section 15(P).
 - Adoption of new "point system" for determining a well-distributed stand of trees and other vegetation. This change is consistent with the requirements of the Natural Resources Protection Act.
 - Vegetation less than 3-feet in height and other ground cover must be maintained in the setback area adjacent to all shoreland areas.
 - The footpath is limited to six feet in all shoreland areas.
 - A minimum number of saplings must be maintained.
17. Administration (Section 16)
 - A copy of the permit must be on site during the work
 - Permits expire if a substantial start is not made within one year. If a substantial start is accomplished in that year, the permit is good for one more year.
 - Appeals - "de novo" vs. "appellate"
 - Variance applications must be submitted to the DEP at least 20 days prior to the Board of Appeals taking action on the variance request.

Mr. Ferland referenced vegetation clearing issues; if limbs, trees, and other vegetation are damaged because of storm or tough winter can those be cleared because they are a safety hazard, or is there a permit process one has to go through.

Mr. Longley stated there is a clearer definition as to whom, when and where those can be cleared; he would have to read that section over again. In Yarmouth they require a plan be submitted.

Mr. Ferland stated he would read and come up to speed.

Mr. Longley gave an example of folks that are mowing their lawns and cleaning up their sites, shouldn't be throwing any debris over the banking. This has been occurring and it kills the vegetation holding the banking in place. If someone was to remove dead vegetation to allow new

vegetation to grow he wouldn't require a permit. If they were looking to remove vegetation for additional uses a permit would be required.

Mr. Vail stated everything we have looked at thus far is for residential uses; if as an example the Town was able to obtain property for a marina how would the zoning allow this.

Mr. Longley stated the zoning would have to be changed; he referenced the Table of Uses in Section 14. Mr. Longley stated the Town could change the zoning to allow commercial uses.

Mr. Neagle stated Marinas are allowed in everything except the Resource Protection Zone, with the approval of the Planning Board.

Ms. Nixon stated in answer to Mr. Ferland's question page 53 P. (1) references clearing in the 75' setback area.

Mr. Neagle thanked Mr. Longley for his presentation; the State adopted this law in 1970 and basically said every town in the State of Maine with water in the Town shall have Shoreland Zoning. If it is not adopted to the State's standards they will mandate State Shoreland Zoning. Mr. Neagle stated the Town does not have a choice if we don't adopt what is in front of us, we will use the State model ordinance. The Town has chosen to go with the least restrictive zoning choice which is best for our landowners. There are things we can't change, if we don't like the 75' bluff on the Foreside. Mr. Neagle thanked the staff for the excellent job drafting an ordinance that meets State standards but yet, allows our land owners maximum development potential. He stated he will support this and thinks the staff has done an excellent job.

Mr. Richards asked if existing sub-surface systems in the shoreland zone malfunctioned are they grandfathered.

Mr. Longley stated yes, as long as there has been a residential use prior to 1985 the systems are allowed to be replaced with more lenient restrictions than a new system.

Ms. Russell asked for clarification on the setback change to the top of the bluff is that in the entire shoreland zone or only in areas designated as "highly unstable and unstable".

Mr. Longley stated only where it is "highly unstable or unstable" will the setback be measured from the top of the bluff. There is also a provision to have some geo-engineering done to determine if the bluff is unstable or highly unstable.

Ms. Russell asked about the 250' line and the 75' setback.

Mr. Longley stated the 250' is the entire shoreland zone; the 75' is the setback from either the high water mark or the top of the bluff.

The public portion of the meeting was opened.

Mr. John Paynter, of 445 Greely Road reviewed his property on the map; he owns the portion most affected by the Resource Protection designation at Knight's Pond. The dam was built in 1969 and there is a gate to control the level of the pond. The beaver activity has tripled the size of Knight's Pond, and he has questioned the State's designation as this is a man made structure. He has an appointment with the State Biologist and his attorney David Laure to meet on site at his property. Mr. Paynter stated his property was bought with his life savings. He would like to see

the area protected in a conservation easement, but is concerned how this designation might affect the property value.

Mr. Richards stated he lived on Oak Ridge and fished in the NE corner of the pond; which has wonderful wildlife.

The public portion of the meeting was closed.

Mr. Neagle stated the Board could discuss the Ordinance in detail; however, the Town's hands are tied as these changes are State mandated. The Town staff has done a great job at incorporating the required amendments with the least restrictive impacts on property owners.

Mr. Neagle moved to recommend to the Town Council the draft text changes to Section 423 Shoreland Areas of the Zoning Ordinance.

Mr. Richards seconded.

Discussion on the motion:

Ms. Russell asked if the new zone around Knight's Pond could change.

Mr. Longley, Code Enforcement Officer, stated the text changes being considered this evening wouldn't be affected. If the State is in agreement that the structure is manmade and not subject to the new rules the area would revert back to the original Shoreland Zoning Map.

Ms. Russell asked how this is enforced.

Mr. Longley stated through education, the permitting process, and neighbor compliance.

Mr. Ferland commented that he agreed with Mr. Neagle, that Mr. Paynter is probably the most affected by the change. Zoning changes are so important to this community; his experience has been with the two years on the Route 100 Committee and most recently with the recent contract zoning on Main Street. Now, we have shoreland zoning which is very important to certain sections of Town, but he doesn't think people understand it as well. And that might be partly because it is initiated at a State level and is presented in a way outside of a public outreach process. He thinks this is an example where some additional outreach may be necessary to get people to meetings at the Council level. He understands that Mr. Longley will be working to educate people, and there is a handbook "Homeowner's Guide to Shoreland Zoning". This is a real opportunity for education and outreach to affected neighborhoods. This is an issue that is stealth by nature and the best thing we can do is make sure the right people know about it.

VOTE ON THE MOTION:

VOTE: 6 in favor (Neagle, Ferland,
Richards, Russell, Ward, Vail)
1 opposed (Couillard)

Mr. Ward thanked Mr. Longley for the presentation, and thanked Mr. Paynter for his information.

F. Administrative Matters:

There were no administrative matters.

G. *Adjournment:*

Ms. Russell moved to adjourn. Mr. Richards seconded.

VOTE: Unanimous

The meeting was adjourned at 8:15 p.m.

A TRUE COPY ATTEST:

William P. Ward, Board Chair

Pam Bosarge, Board Clerk