

**FALMOUTH PLANNING BOARD MINUTES
TUESDAY, FEBRUARY 3, 2015**

MEMBERS PRESENT: Jay Chace (Chair), Christopher Hickey, Rudy Israel, Thomas McKeon.

MEMBERS ABSENT: William Benzing

STAFF PRESENT: Ethan Croce, Senior Planner; Lisa Sangillo, Meeting Recorder

The meeting was called to order at 6:33 pm.

Item 1 Approval of minutes from the January 6, 2015 Planning Board meeting.

Mr. Hickey motioned to approve the January 6, 2015 minutes. Mr. Israel seconded. After review of the minutes, Mr. Chace amended the motion to table the minutes subject to a couple minor revisions. The Board agreed to vote on the minutes next month.

AGENDA ITEMS:

Item 2 Walsh Family Trust. – 229 Foreside Road - Request for Shoreland Zone Permit for slope stabilization and vegetation management activities. Tax Sheet 451; Map-lot U16-087. Zoned RA, LR(Shoreland), and Water View Overlay.

Mr. Croce gave an overview of the staff notes to the Board of the Walsh's application.

Mr. Pat Carroll of Carroll Associates was present as representative for the applicants. Tom Greer was present and Kat Joyce from Bernstein Shur was present as counsel for the applicants. The parcel extends from Foreside Road down to the ocean and is directly north of Handy Boat. It's a very steep bluff that extends 30 feet from the high water line. There is a Town sewer line that extends over the bluff along with a 40' easement. In August, there was a major rain storm that pushed a large amount of fill into the resource area. There has been continual erosion to the area making the sloughs almost vertical at this point.

The owners requested a plan to stabilize this area to prevent further erosion as they are worried about encroachment on the major improvements from 2013. The second part of the project is vegetation management as the area is rampant with invasive Japanese Knotweed (bamboo). A DEP permit was obtained to use herbicides to eradicate the bamboo. It's a very invasive plant that is wreaking havoc up and down the coast. The only way to eradicate the knotweed is to remove the soil, replace the soil, and replant.

They are proposing to come in from the high water line up 7' and armor with riprap at a slope of 1.5 to 1. There would be erosion fabric behind and it will taper back at a 2:1 slope. They will then plant with trees and shrubs (3' on center).

They have identified a total of 30 trees that are within the disturbed area that would fall within the shoreline regulations as far as diameter greater than 2". The oak trees will come out as they are on a near vertical face of the cliff. They have taken an inventory of the trees and after reviewing the Shoreland ordinance, they will be replacing 58 trees within the site, which are native species trees.

The existing lawn area that wraps around will be maintained. They are rebuilding the slope at a much more stable and uniform condition. They are also dealing with the sewer line and will be removing 4-6 feet of grade over that sewer line. They have discussed this plan with Pete Clark of the Falmouth Wastewater division.

They have created a landscape plan that involves planting 58 trees located within the landscape vegetated slope with understory plant material: woody shrubs and grasses with wildflower seed mix in the back. They feel it will provide a long term solution to the knotweed problem as well as a long term solution to the slope stabilization.

They have gone through the Shoreland ordinance and feel they meet all of the Shoreland criteria. The ordinance does not specifically allow for removal of invasive species but the plan is consistent with DEP's current practice of allowing invasive removal and will be consistent with the State's soon-to-be-adopted Shoreland Rules, which contains an exemption for removal of invasive species, so they are working within the guidelines of the DEP.

Mr. Chace thanked Mr. Carroll for his presentation, and asked the Board for questions or clarification. Mr. Hickey asked what the primary source of the erosion was. Mr. Greer believes it is wave action at the bottom of the slope and also water coming from above saturating the clay soil slopes.

PUBLIC COMMENT: No public comment.

PUBLIC COMMENT CLOSED.

Mr. McKeon stated he understood their job was to make a judgment call. He is satisfied that the stabilization is needed and wants to know if it complies with the ordinance, Section 7.18—Removal of Trees. He asked what they were measuring for trees.

Mr. Carroll said they took the Shoreland zone and counted trees from the 250' mark and high water mark, then took the number of trees they were removing that were 4" or greater. This calculated out to the removal of 9 trees that are 4" or greater in diameter. He also explained how the section of the ordinance would work in this instance.

With respect to the 75' to 250' distance from high water, where the opening is not supposed to expand, Mr. McKeon requested Mr. Carroll to explain how the ordinance works here.

Mr. Carroll explained that there was not really any existing canopy in that area. They are planting at a higher density than what they are removing by removing 30 trees and planting 58.

The hope and desire is that the bank will stabilize itself and the trees will be able to grow and provide a larger canopy than what currently exists.

The second part of the project is taking the knotweed out of part of the area, but not extending the disturbance into the resource area. Mr. McKeon asked if Mr. Carroll had any problem with addressing Jamie Mason's conditions of approval. Mr. Carroll said he did not.

Mr. Chace asked about a disposal plan for the knotweed. Mr. Carroll stated that part of their specifications with the contractor will be that the knotweed is to be disposed of in a proper manner; although specifics have not been discussed as of yet. Mr. Chace stated that he would like the Town to know where the material is going and make it a condition of approval. The applicant agreed. The other comments from the Town Engineer, Jamie Mason, were to make sure the erosion control blankets were 100% biodegradable and ensure there is a performance bond prior to the start of the project.

Mr. Israel agrees with Mr. Mason's memo and stated that the DEP would require them to file a disposal plan. Mr. Israel commended Mr. Carroll on a great job putting the application together.

Mr. Hickey requested that Mr. Croce walk him through the Shoreland zone process. Mr. Croce explained the two zones, the first being from the high water mark up 75' and the second being between 75' to 250' from the high water mark. The standards are different within those two areas, and part of the task of the applicant is to document for the Board how they meet the specific standards for the two areas.

Mr. Chace stated they don't see many Shoreland Zone applications and commented that the application was well done. The applicant was able to demonstrate stabilization and erosion control, and he is comfortable with the proposal as presented.

Mr. McKeon agreed, and stated that if the application is approved with addressing the staff comments and conditions, his concerns are covered.

Mr. Hickey was concerned about the standards with respect to the knotweed and what source of latitude the Board has with respect to a waiver of a standard that isn't necessarily waivable.

Mr. Croce stated that it doesn't fit cleanly within the ordinance as the ordinance doesn't contemplate these types of erosion control activities on the shoreline. The new DEP rules, which will be coming out within the month, will expressly allow these activities. With respect to the Board's latitude around vegetation removal for invasives, it may be easier to justify in this instance due to the fact that both DEP and the CEO have approved measures that currently allow for all of the vegetation in this area to be removed through mowing and use of herbicides. This, arguably, makes it easier to justify the proposed grubbing and replanting activities, given the lack of existing vegetation anyway, and given that the end result will be replacing invasive species with native species.

Mr. Hickey stated that the Board is following the precedent that the DEP has already approved with these erosion control measures. He then asked what the size of riprap was that was being

placed there. Mr. Greer answered that it would be a minimum of 18” in diameter; most would be bigger.

Mr. Carroll stated that the DEP is beginning to request that riprap be of a dark color so it blends in with the shoreline.

Mr. Croce read the conditions of approval of the application:

Mr. Chace asked if anyone would entertain a motion to approve the application. Mr. McKeon moved to approve application of Walsh Family Trust – subject to the conditions stated. Mr. Israel seconded. No further discussion. Approved 4-0.

Item 3 **Risbara Bros. Construction Co. Inc.** – Hardy Road - Request for preliminary subdivision approval for the proposed 7 lot Grove Forel Baek Subdivision. Tax Sheet 451; Map-lot R07-100. Zoned F, RCZO, and SP (Shoreland).

Mr. Chace stated that the developer was before the Planning Board in November 2014 for a pre-application sketch plan review for a proposed six lot conservation subdivision off Hardy Road. The Planning Board conducted a site walk of the property on November 19th. The applicant appeared before the Board last month, January 2015, for a second sketch plan review for the purpose of introducing the Board to a revised subdivision design that included one additional house lot.

The applicant is now requesting preliminary subdivision approval for seven house lots, in addition to one exempt house lot which the developer has indicated will be conveyed out prior to final subdivision approval, for a total of eight new house lots on the subject property.

Mr. Rocky Risbara briefly presented his application for preliminary approval. They are proposing seven new lots. He stated he believes they are in line for preliminary approval.

Mr. Chace asked for any clarification from the Board of which there was none.

PUBLIC COMMENTS:

Bob Gaudreau – 55 Hardy Road – Mr. Gaudreau stated that he was at a disadvantage at not seeing what has been resubmitted and asked if the 1500’ dead end road issue was still an issue of contention. He was concerned over the elevation of wetlands and stated that he had additional information that would impact Lot 5. He stated that there had been a submission on the water testing, and specifically finding toluene in the water. He stated there would be a plume effect on Lot 1 from the town dump, and there were also pollutants downstream as well. He was concerned about the effect of excavation on water levels in the pond which are at about 12’ below the road level stating that the Applicant has a responsibility to not harm the water source within 250’ of any construction they initiate. His pond is within that 250’ limit. He wanted to make sure erosion control issues are addressed. He suggested a possible third party review of the natural resource and wetlands issues as he did not feel they are adequately mapped in certain

areas. He was also concerned about the impacts of wells that will be drilled and how they will impact surrounding properties. Finally, he stated that the plans are deceptive as the utilities are shown underground on one plan and above ground on another plan.

Mary Louise Dyer – 65 Hardy Road –

Ms. Dyer stated that they have previously submitted paperwork opposing this subdivision. She stated that they had only a couple days to look over the water report and was concerned about the subdivision as it relates to the ponds and wells; her main concern being the septic leaching into the water and then into the ponds. She also asked that they have an independent person come in to see if there is enough water to serve the houses and also questioned the dead end street issue.

Mr. Chace stated for the record that the Board received letters from Mary Louise Dyer and Carol Katz of 69 Hardy Road. Ms. Dyer stated that she had additional information for the Board to which Mr. Chace requested she give to Staff.

NO FURTHER PUBLIC COMMENT.

Mr. McKeon asked Staff that if the Board preliminarily approved the project is there still an opportunity between now and final approval for abutters to address issues. Mr. Croce stated that preliminary approval is the expression of Planning Board's support of the project design and that approval is not final until the Planning Board issues a Final Approval.

Mr. Chace stated Section 7.C.4., which affirms Mr. Croce's representation. He stated that if new information comes to light that can be weighed.

Mr. Chace then stated the major outstanding questions are water quality for potable water, effects on ponds, dead end street provision. At the last meeting, they reviewed the streetscape provision of the ordinance and the need to maintain some of the natural characteristics of the lots.

In terms of design, the Board has looked through the 4-step review process at the last two meetings, the intent of which is to ensure that the conservation features of the property are maintained and preserved to the greatest extent possible.

The discussion was started with the dead end provision and whether or not it applies and requires consideration of a waiver.

Mr. McKeon stated he is persuaded by the applicant's attorney's analysis of the issue. He would support a waiver if one was needed, but he does not believe it is needed.

Mr. Hickey stated he had nothing to add as he stated in the previous meeting that he was also in support of waiver.

Mr. Chace stated that staff indicated that the ordinance applies. The applicant states it doesn't apply. Mr. Chace stated that he thinks it is important that the Board determine whether or not the ordinance provision applies. Mr. Chace supports staff's interpretation of the ordinance and believes that the provision does apply and that a waiver request is needed.

Mr. Risbara would like formally request the waiver then as he feels it's the only clean way to move through the item today. Mr. Israel supports a waiver. Mr. Hickey felt a waiver was a cleaner way to deal with the issue as well. Mr. Hickey asked if the waiver was required for preliminary approval.

Mr. McKeon stated that the Board can vote on the waiver now, and he moved to waive the limitation on number of homes allowed on a dead end street per Appendix 5.

Mr. Hickey seconded.

Mr. Chace disagrees to a certain extent with his fellow Board members and motioned to amend the waiver request to be conditioned upon the applicant exploring the feasibility of a limited emergency access way connecting to Westbrook. Mr. Israel seconded the amended motion.

Mr. Hickey explained that he felt it was a reasonable exploration to make, but he is not convinced that it's this applicant's responsibility to do this. The Fire Chief would like the connection, and if the Planning Board is willing to waive the requirement, the Town Council should take it up with the Fire Department as the Council was the entity to make it a dead end condition. Mr. Hickey doesn't feel it's something the Planning Board has the authority to require. Mr. McKeon stated he agreed with not requiring the connection.

The Board voted on Mr. Chace's amended motion to require exploration of an emergency access connection at the end of Hardy Road. Motion failed 2-2. (Chace, Israel)

The Board voted on the original motion by Mr. McKeon. The motion to approve the waiver with no conditions passed 3-1. (Chace)

The next item discussed was the streetscape buffer. Mr. McKeon asked the developer to describe what one would see on the development side of Hardy Road after this project is done. Mr. Risbara stated that there would be a handful of trees that will be removed that are in the right of way. There is a 25' strip where trees will remain with the exception of an area cleared for driveways and utilities. Power will come in from the street at the driveways and will go underground to the houses. There are a couple of places where poles will have to be installed.

Mr. McKeon asked if all the trees will stay in place with the exception of the driveways. Mr. Risbara stated that there may be some trees taken down, but they have been identified and the area could be labeled a no-cut buffer except for the driveways and utilities.

Mr. Chace stated that there was commentary in the application about the need for additional tree removal for roadside ditch grading and for house grading.

Mr. Risbara stated that grading would not be needed in the buffer for houses or septic. Wells may be near the buffer but not in the buffer. Driveways and utilities will be combined if possible. Mr. Chace asked the applicant if they can ensure they are combined. Mr. Risbara stated he would take a harder look at that issue with the exception of the new power poles.

Mr. Hickey referred to the traffic engineer's summary and asked what authority the applicant had to remove trees within the town's right of way. Staff stated that the applicant needs the consent of Public Works to do so, but that it appears from the Town Engineer's memo that the Applicant already has the consent that they need for the trees identified. Mr. Risbara stated that Public Works has met with St. Clair Associates on site and has identified the trees that he wants removed.

Mr. Hickey stated that he would like to see the 25' no cut language for final approval as a plan note. Mr. Croce stated that a reference in a deed to the buffer would also be appropriate.

The issue of potable water, water levels, and contamination were discussed next. Mr. Israel stated that he would have preferred for St. Clair Associates to have been able to attend this meeting to explain the water test results and address the abutter concerns.

Mr. Risbara stated that a lot of work was done on this topic. They drilled a well on site and have determined that they have potable water. The water does contain a little arsenic and uranium, but it is nothing that isn't found in most wells in Maine. He also stated that he didn't understand what the ponds and well water have to do with each other. The basement floors are going to be above the ponds and the sites will drain down to the wetlands. He also stated that if the Board feels the information is inadequate, they will have him elaborate.

Mr. Chace stated to the public that the evidence provided by qualified professionals to the Board is that the wells will be drawing water from bedrock that is much deeper than the ponds and not from the aquifer feeding the ponds.

Mr. McKeon stated that page 3 of the report outlines the reasons why the geologist doesn't think it's going to have an affect on the ponds. He stated that if there is evidence that an abutter wants to present from qualified professionals that is contrary to the current evidence before the Board, the Board can review that. His review of the project is based on what has been presented to date from qualified professionals.

Mr. Israel stated he agreed with Mr. McKeon.

Mr. McKeon stated that Mr. Gaudreau brought up what he felt was a discrepancy in the wetland boundary of Lot 5 at the previous meeting, and asked if the wetland scientist had been back to confirm the boundary. Mr. Risbara stated that the wetland mapper had been back and stated he would stand by his mapping.

Mr. Hickey asked Mr. Risbara about a specific contaminant, coliform, and if they retested it. Mr. Risbara stated that the revised testing was in the packet. Mr. Hickey asked if there was an issue with contaminants above the level of the casing, and Mr. Risbara stated that they found that it was organics in the soil.

Mr. McKeon stated that staff notes raised the issue of post development stormwater discharge being greater than pre-development flows. Mr. Risbara stated there was a slight increase and

that meant that they might need rain gardens and/or filter areas to be installed as the new houses are going to slightly increase what's there now. They may need some small grass infiltration areas for the rain to be treated before it goes into the ground. Mr. Chace hoped that treatment measures would be more naturalized systems.

Mr. McKeon stated that this is all pending whatever Cumberland County Soil and Water would say. Mr. Risbara confirmed that and doesn't see it as something they can't work with and there wouldn't be a need for a system on every lot.

Mr. Hickey asked what type of DEP approval was needed on this project. Mr. Risbara stated that they need a full permit instead of just a PBR as originally indicated as they are disturbing more than one acre.

Mr. Hickey asked if the stormwater treatment systems would be owned-in-fee by and maintained by the homeowner. Mr. Risbara stated that there would be shared ownership if stormwater was taken from multiple lots. Mr. Risbara stated he was trying to avoid creating an association, although they may need to have an agreement between abutters with respect to the open space.

Mr. Hickey stated he was uncomfortable with a preliminary approval based on the stormwater item not being finished and not being a well defined strategy for dealing with that.

Mr. Chace feels it's fairly minimal in nature and tweaks will be fairly subtle; and the characteristics of this application have him leaning towards being okay with the stormwater plan at this point.

Mr. Risbara stated that the Board could grant a waiver, but they won't get a waiver from DEP. He stated he would continue to work on the stormwater piece and that any system he needs will be on individual lots.

Mr. Chace stated that he felt the majority of the Board would support the Town Council taking over the open space/trails.

Mr. McKeon stated that he wanted to see the trails marked and mapped so it is clear as to where it is, and that the applicant will need to be specific about the trail system with respect to whether there is a homeowners association.

Mr. Chace asked if the buildings currently on the property would be removed to which the applicant stated they would. Mr. Chace then stated that the Town needs to know what their responsibilities are going to be with respect to the existing dam and pond.

Mr. Risbara stated they have talked with Community Programs and the Town Manager about the site, and they have been tentatively put on the agenda for the February 9th Council meeting. He stated that Note 10 Item D would need to come off the plan as Mr. Risbara has promised the Snowmobile Club permission to cross the property. The current landowner gave permission for snowmobiles to cross the property this year. He stated that the Town assured him they can work with him on that and reroute the trail around Lot 1 where the Town will take it from there.

Mr. Chace stated that they had a letter from Maine Traffic Solutions that spelled out where the driveways would be located and which trees would need to be removed. He asked that this be shown on the plans. Mr. Risbara stated that the letter talked about which trees needed to be removed, but that the driveways could be located anywhere on the lots. He did not want to be restricted as to where they could put the driveway as they don't know where the house is going to be yet and wanted to avoid having to come back to the Board later to move the driveway. Mr. Chace stated that Lot 6 was where they needed to codify this issue since that lot's driveway is represented as being limited as to placement.

Mr. Chace asked Staff if all the issues raised in the memo have been discussed. Mr. Croce stated the only one remaining was the buffering. He asked about the proposed treatment of the perimeter buffers on the property, specifically Lots 6 and 7. Mr. Risbara stated that they cannot say no cut because they do want to connect the existing trail to which Mr. Croce stated that clearing to accommodate a limited trail is allowed. Mr. Risbara stated, then, that the buffers could be no cut.

Mr. McKeon asked if there would be a problem if an abutter did want to have a wetland scientist look at lot 5. Mr. Risbara stated there would be no problem with that. He also stated that he had someone look at the dam before it snowed and will have a letter forthcoming from an engineer regarding that.

Mr. Chace asked if there were any other comments from Board. Mr. McKeon asked about the well exclusion zones. Mr. Risbara stated that they could not put a well within 100' of a septic. All lots have those specifics on the plan.

Mr. Chace stated that the Board seems comfortable with the current information the applicant has provided to date. He entertained a motion from the Board.

Mr. McKeon asked if they needed to outline all conditions at this time to which Mr. Chace stated that those would be finalized at final approval.

Mr. McKeon moved for preliminary approval. Mr. Chace seconded. Approved 4-0.

Mr. Chace was asked to relay that the LMAC – CDC will hold an informal meeting to get public feedback to begin implementation of the recently adopted Comprehensive Plan. This will be held on Thursday, February 26, 2015 from 6-7:30 p.m..

Mr. Hickey asked where the Administrative Rewrite process was and if there would be rewritten ordinances. Mr. Croce stated that the purpose of the rewrite is to reorganize the ordinances to eliminate inconsistencies and duplications and add clarity. There may be rare instances where a policy decision is required, and those instances will be highlighted.

Meeting adjourned at 8:37 pm.

Recording Secretary,
Lisa Sangillo