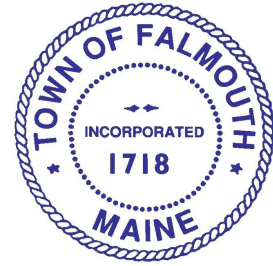


Town of Falmouth
Long-Range Planning Committee
Minutes of Thursday, March 26, 2009



Members: Hugh Smith, Chair; Lissa Robinson; Karen Farber; Hugh Coxe; Kurt Klebe, Jim Thibodeau (via phone)

Council Liaison: Joe Wrobleski

Staff: Amanda Stearns, Albert Farris, Theo Holtwijk, Ethan Croce

Guest: Bob Shafto, Open Space Ombudsman

Member Absent: David Chase

Item 1 Call to Order

Chairman Smith opened the meeting at 7: 05 PM

Item 2 Continuation of Shoreland Zoning Review

Theo reported that the proposed shoreland zoning draft had been reviewed by Mike Morse of the Maine DEP. Mike offered various written comments, which had been reviewed in a follow-up meeting between Mike, Al Farris and himself. Based on that meeting various comments and questions were addressed. However, a number of amendments suggested by Mike remained. Staff has worked to update the draft with additional changes. These changes are highlighted in yellow. In addition, three pages of this draft had a few highlights in green, which represent the most recent changes. Theo proposed to run through those one by one.

Definitions: The definition of “foundation” was made specific for shoreland zoning versus all other applications.

The application of “streams” on the map was clarified with Mike. While the definition is broad, the shoreland application is limited to just those streams shown on the shoreland map. Mike was OK with that.

Section 6.5.a.3: It was noted that the “Planning Board” reference should be replaced with “Board of Zoning Appeals.” It was requested to clarify that the minimum size for new tree planting should be three feet.

Section 6.11: It was noted that the “Planning Board” reference should be replaced with “Board of Zoning Appeals.”

Section 7.9: The 125 feet setback was in error and was replaced with the standard 100 feet. The term “moderate-value and high value wetlands” was replaced with “wetlands.”

Section 7.18.b.2: The term “GPA” was clarified to mean Great Pond Act. This will be inserted in all places where GPA appears.

Section 8.8: The existing language requires the Board of Zoning Appeals to notify the Building Inspector and Planning Board was removed as this is not the current practice.

Shoreland Zoning Map: The Committee reviewed two areas that had been proposed by Mike for deletion. The first one is adjacent to the Presumpscot River. This area used to be in the Town of Falmouth, but was a few years ago transferred to the City of Portland. The second area is associated with a specific floodplain near the Cumberland line. This area was deemed by the DEP to be inconsistent with the shoreland language. The Committee was Ok with that.

Coastal Bluff Map: Theo showed the Coastal Bluff Map that had been prepared by Judy Colby-George based on a Maine Geological Survey Map. This one was easier to read by the Code Enforcement Officer (CEO) and the public. Some 50 properties have “highly unstable” or “unstable” bluffs. It was noted that the map was not accurate in various locations. It was agreed that the CEO should use the map as a guide and that field verification was needed where new development was proposed. It was recommended that a source reference be added to the new map, so one could review the classification and methodology used.

With the revisions noted above, the Committee was comfortable with the changes that staff had made.

A motion was made by Kurt Klebe and seconded by Hugh Coxe to recommend to the Town Council that the shoreland zoning amendments as revised at the March 26th meeting be adopted. There was no discussion. The vote was unanimous.

Item 3 Natural Resource Ordinance Review

Regarding the section on compensation, Amanda said the compensation ratios represent the same ratios the State is using. The Town Assessor suggested getting appraisals of properties instead of setting specific fee ratios since values change over time.

Bob Shafto said appraisers always base value on the property’s highest and best use which is typically represents maximum development potential.

Kurt thinks that’s why you should put a dollar value on the property based on the formula since the unbuildable land isn’t worth as much.

Joe said he spoke with DEP and they sent him a sheet for compensation amounts based on certain ratios. He feels more comfortable with using a schedule like this, although it does not necessarily have to mimic DEP’s. You could reference out to the formula in the Ordinance and have it be subject to Council change.

Bob said Hammond Lumber on Riverside in Portland had to use a 20:1 ratio for alterations to their site on Riverside in Portland. They purchased development rights on the Adam property and paid \$9,000 an acre on the property for \$200,000+ overall. Bob said he is on the DEP “in-

lieu-of-fee" (ILF) Committee and the value is determined through an assessment based on the yellow book appraisal standard, the highest possible standard and also the most expensive. The applicant would have to pay for this to be done.

Kurt said it is difficult to use a table for Falmouth that is based on generalized county-wide values. Even comparing West Falmouth to the Foreside may be difficult.

Bob suggested using LMF's appraisal standards instead of the yellow book standard.

Jim said from a practical perspective it is dangerous to evaluate a property that's already being developed. It is not fair to throw curveballs to the development community and ask them to guess what the values and related costs might be at the end of the day. Jim suggested perhaps using a rate similar to what the Town is paying for open space right now. He would advocate for using a known, set fee which could be altered by the Council from time to time, and he would not support requiring an individual evaluation of every property on a case-by-case basis.

Hugh Smith wondered about using a per acre value calculation based on the sales price of the property if it seems like it was a reasonable purchase price. That would provide a reasonable indication of what the market value of the parcel was.

Kurt suggested the possibility of using the property's assessed value.

Amanda said assessments are equal across the board so to speak, and it is fairly easy to adjust to market value for times when assessments are lagging behind the market value. This could be a good foundation to use.

Jim thinks that if a schedule could be established once a year for example that would be good. A developer is not going to want to go through a complicated, unknown process of determining where and what he will need to compensate for. Developing land is a risky business where half of all developers succeed and half fail and this is an additional risk being added to the equation if the amount is unknown. It should be made uniform and predictable.

Kurt thinks using the assessed values which are readily available, and not a moving target, should not be much of a burden.

Jim said it just needs to be predictable.

Hugh Coxe said it strikes him as being as predictable and as fair as you can get in many ways. If a piece of land isn't as developable as one thought it was or vice versa, that could be unfair one might argue.

Joe wondered about taking the total land valuation of the Town and determining an average square foot value in that way and then re-set that amount every year.

Amanda said she could explore producing some examples based on different methods.

Jim said the Town's price to buy open space is reasonable to him at \$6,000 an acre. That's what these resources are worth. To equate that to a property on Route 88 is unreasonable though.

Joe said that conservation land is purchased at a lower value. The actual value or cost of restoring property that's impacted has to be factored in too.

Kurt said the point is not to have a 1:1 relationship. The point is to put a high value on the impact to natural resources. If it's worth impacting the resource by a paying fee, that's the developer's choice. This is not a mandatory expense to developers, it is voluntary. What the developer is getting is buildable land.

Jim said the land left in Falmouth is exceedingly difficult to develop and that this would be a land taking.

Joe said he is not wedded to any specific suggestion at this point.

Kurt said the ordinances don't allow for compensation now.

Hugh Smith said the aim is to provide some flexibility for when there is no other alternative to get around it. At the same time, the Town should not make it so cheap and so easy to conduct alterations that there will not be a disincentive.

Bob said the Town is looking at creating a local in lieu of fee program. The state program says land is worth a certain price per square foot. You could take the average value of undeveloped land in Falmouth and calculate that amount every year. That was Joe's proposal.

Joe said that using the State's Cumberland County figure, if you impacted 10,000 square feet of vernal pool, at a 20:1 ratio you would pay \$600,000.

Kurt described an example where a developer impacts a vernal pool by building a road right over the pool because it is the only option. Would the impact then be measured only by the amount of damage to the resource itself or would it include the area of concern too? What is the area that is used for compensation in this example? Should the area of concern be compensated for even though the area of concern might disappear once the pool is destroyed?

Joe thinks the design professionals would present their figures for impacts and compensation.

Hugh Smith asked for verification on whether this is a 100 foot area or a 250 foot area.

Amanda said the policy says 250 feet but that we haven't applied ratios to that area. There could be different ratios applied to different areas. All wetlands could be 8:1 and all areas within 100 feet and the resource itself could be 20:1.

Kurt wondered if someone builds a house that covers all of a vernal pool, is that impacting the pool only or is all of the area of concern that formerly existed taken into account too.

Hugh Coxe said destroying the resource entirely is one question. Another question is how you calculate it if you degrade the resource without destroying it in its entirety.

Lissa suggested that the different categories on page 10 could be unique with different formulas applied.

Karen would like to leave the ratio alone and deal with an applied rate.

Kurt and Hugh Smith agreed.

Lissa said "preservation" is not in the definitions section. Should that word be defined? When she came upon the word "preservation" she was wondering what that means.

Hugh Coxe agreed with Lissa. He thinks the term doesn't necessarily connote purchase.

Amanda said if you define it then it applies to preservation everywhere in the Ordinance. She would rather define it just for this section.

Kurt asked if there was a reason why preservation means purchase of fee versus an easement.

Amanda thought that was the policy.

Kurt said dollars can usually go further if you are purchasing an easement and not the fee.

Amanda said for administrative purposes this will then get into legal review of easements, which isn't necessarily a problem but it will increase costs to the developer with legal review of every easement. Deeds with restrictions are easy to read.

Kurt said under C.I.e the requirement that property be conveyed to a 3rd party is essentially an easement. He thinks the 3rd party should have to be a qualified party to hold an easement.

Hugh Coxe wondered if DEP allows easements. He recalls the committee wanted to mimic the DEP process so that may play into the decision. If DEP does not allow easements, maybe it would be helpful to try and find out why they do not.

Kurt thinks we should explore the easement option if it is a viable option.

Lissa said they may want standard covenants to be required too.

Amanda said that preservation is based on land area not cost.

Hugh Coxe said right now we have no standards for that. It could be non-developable land anyway.

Amanda said the term preservation will be clarified and we can look into having standards for easements.

Hugh Coxe is concerned about the time that could need to be spent researching this issue and wonders if the committee should recommend adopting the DEP standards as a short-term solution or something otherwise simple in the interim.

Lissa said the Ordinance should be consistent in using term like equal or greater value versus higher or like resource, etc.

Kurt said Section A could read “resource value” to distinguish between functionality.

Joe wondered about directing the money to be placed in the Town’s open space fund.

Amanda asked if the intent was to allow the flexibility to purchase non-natural resource property. Someone might purchase River Point for example where a portion is a resource system but 80% of it is not.

Joe is willing to keep it simple and trust the process. A lot of resource values are based on purchases.

Amanda said that makes it easier to administer.

Kurt feels the preservation piece will only be used if there is a resource piece on the same parcel or one nearby.

Next Meetings

April 9th is out since it’s a holiday. They will shoot for April 16th for the next meeting to be verified by email. April 30th will be the next meeting if possible. Hugh wondered when it might be appropriate to have a map example.

Amanda said that GIS has not been working. She will commit to having at least one example by the 16th. Veronica Lane was a possible example raised by Dave Chase.

Hugh Smith adjourned the meeting at 9:35 p.m.