

LPAC Meeting Minutes

Members Present: Hugh Coxe; Hugh Smith; Lissa Robinson; David Chase; Karen Farber (arrived late)

Members Absent: Kurt Klebe; Jim Thibodeau

Council Liaison: Joe Wroblewski

Staff: Ethan Croce

Date: April 16, 2009

Approval of March 19, 2009 minutes

Approval of the March 19, 2009 minutes was deferred to the next LPAC meeting.

Natural Resource Ordinance Amendments

Joe thought it would be helpful to have a reasonable idea as to how many wetlands of special significance exist in Falmouth and thought that Jeff Simmons might have an idea as to this.

Under 4.8.2.a “Applicability”, Joe thought this needed some more work to better identify what “Individual Lots” means. He will contact Amanda regarding this.

Under 4.8.5.D – Joe wasn’t sure that the intent was that compensation would be required for permits issued by the CEO. He believes it was not the intent and thinks perhaps D should be struck but would like that clarified for next time.

Under 5.1.4.B (second paragraph), Joe asked for clarification as to whether this mimics the State’s provision. Ethan wondered if perhaps the words “significant vernal pool” were supposed to be struck and not “or a vernal pool”. He thought that the exemptions in 1 & 2 below were probably meant to apply to all vernal pools and not just significant vernal pools.

Joe wanted clarification on the inconsistency in 5.1.6.1.B.2 vs. ...5.1.6.2.a.2 vs ...B.2&3 and the difference between buffer areas and no alteration areas. Ethan said this should be clarified and pointed to one potential difference regarding the requirement to re-vegetate and actively plant areas in the buffers in certain instances.

Under 5.1.6.2.B4 & 5 – Joe suggested adding verbiage to have read “Alteration is permitted...25% of the area...”

5.1.8.a.1 – Joe thinks that for non-significant wetlands no compensation should be required for alteration of the area of concern. Similarly, with 5.1.8.a.2, Joe thinks it is just disturbance of the

resource itself requiring compensated and not the area of concern if it is not a wetland of special significance.

Under section 2. "Monetary Compensation" - Get clarification if the State only mitigates for wetlands of special significance and significant vernal pools.

Joe said the ordinance now has now been corrected to require a 20:1 ratio for preservation and only a 4:1 ratio for vernal pool monetary compensation. There are two components to monetary compensation (square foot locally for undeveloped land) and also the cost of wetland restoration (this State schedule is set by County valuation figures and the cost of restoration). These two totals are added together. Amanda had previously recommended using the local value of undeveloped land per square foot plus the State's value of \$3.28 per square foot.

David said regarding requiring compensation there is a difference between the landowner who has 200 feet of road frontage versus the landowner who only has much less frontage and has few options for site access except for going right through a vernal pool. The latter person has no reasonable alternative to disturbing in the resource.

Lissa said that person could negotiate with their neighbor to acquire alternative access.

David said, practically speaking, there are not many abutters who would allow for that to happen.

Joe thinks if a property owner wants to impact a vernal pool in order to develop land it is reasonable to ask that person to pay. One option would be to use the State's number for value instead of a different local valuation figure. Another alternative is to find out who's doing this kind of work in the State to gauge what the actual cost of creation per square foot is and use that data to develop a number.

Hugh Smith needs to understand what a typical real world example would be with respect to vernal pool disturbance. His sense is that vernal pools themselves are generally not that big but the area of concern is. He said nobody is opposed to compensation, but the problem is being able to wrap your head around a realistic real-life scenario. It does not make sense to put compensation numbers in effect that no one will ever use.

The monetary compensation formula should be clarified. There is a desire to develop some real world examples of possible fees that could accrue to a typical project. Is the local assessed value formula based on a per acre measurement?

Lissa said the committee does not have any scientific information about what happens if someone destroys only half of a vernal pool for development. If the ultimate outcome of altering half a pool is that the pool dies anyway, this would be important to know. It may not make sense to require an applicant to spend a lot of money on compensation to protect a pool that cannot be saved. Lissa is not comfortable with only using the vernal pool square footage area calculation representing only the degradation of the pool itself.

Hugh Coxe said the DEP created this program with the idea of rebuilding wetlands. He wondered whether there is evidence showing that it is possible to rebuild a vernal pool and re-create its essential functions.

Lissa thought she recalled Jeff Simmons indicating that recreating vernal pools was very difficult and that the success rate is low.

Joe pointed to the fact that local compensation monies are proposed to go to the Town's open space fund which doesn't directly preserve vernal pools per se but focuses more broadly on natural habitat protection per the goals of the Greening of Falmouth.

Lissa thinks the Open Space Committee has an anthropogenic factor with giving humans access to open space and is not strictly focused on natural resource/wildlife habitat preservation.

Joe said open space preservation does focus on large unbroken tracts in West Falmouth which does achieve wildlife habitat goals and thinks is close enough and simple to administer. He thinks there should be a showing of need and a showing that the overall objectives of the ordinances are not being undermined by the compensation plan.

Lissa thinks this does not work well for vernal pools though. If you are going to alter/destroy half of a vernal pool does it even make sense to preserve it at all?

Joe said it is not possible to preserve every vernal pool in Town, but he believes the Town should make efforts to preserve those pools that have a good chance of surviving and making exceptions for others.

David said the formula, even at 2:1, is going to be real with the wetlands if not the vernal pools.

Joe said that is the State's standard for compensation. It would only be 2:1 for wetlands of special significance. Joe pointed to Jeff Simmons' email explaining this to some extent as well.

Staff will research whether DEP includes the buffer area in its compensation figures and will present some draft figures for the next meeting. The question is how are the State rules applied in terms of the resource and the areas of concern.

Lissa wondered if the committee already had a policy decision on this issue.

Hugh Coxe does not believe the committee ever broached this subject with compensation.

LPAC thought it would be helpful, if at all possible, to have someone involved with the State's compensation program attend the next meeting. Perhaps Aram Calhoun, Jay Clement, or a DEP staffer. LPAC also thought that a matrix should be created saying what the State does versus what the Town is proposing.

LPAC reviewed some prior-approved development projects, including the Hurricane Run fourth amended subdivision, the school athletic fields site, and the proposed Blakewoods subdivision.

For Hurricane Run, the committee spoke to the need to take into consideration the existing road bed in that example and of giving the permitting authority the flexibility to take existing disturbance into account when allowing improvements to be sited.

Although David thought otherwise, the rest of the committee saw more limited value in the school site graphic.

For the next meeting, staff will develop some more hand graphics for at least Veronica Lane. Karen suggested maybe also for Mussel Cove Landing or another better example with a lot of natural resources on-site.

Hugh Smith suggested using GIS to show layers turning on and off. Hugh Coxe said that will be more laborious without CAD files converted to show plans.

LPAC members agreed to forward any questions regarding the definitions section on to Amanda on an individual basis and if any questions are brought forward they can be addressed as an agenda item at the next meeting.

Next Meeting

The next meeting will be on April 30th.

Meeting adjourned at 9:30 PM.