

## **FALMOUTH PLANNING BOARD MEETING MINUTES**

**TUESDAY, FEBRUARY 1, 2011, 6:30 P.M.**

**FALMOUTH TOWN HALL, COUNCIL CHAMBERS**

**MEMBERS PRESENT:** Bill Lunt (Chair), Bernard Pender, William Brogan, Walter Arsenault (Alternate), Kermit Stanley (Alternate)

**MEMBERS ABSENT:** David Fenderson, Heddy Snyder, Becca Casey

**STAFF PRESENT:** Ethan Croce (Senior Planner)

The meeting was called to order at 6:40 pm.

Walter Arsenault and Kermit Stanley were appointed as voting members.

### **1. Approval of January meeting minutes**

Bill Brogan moved to approve the meeting minutes; Bernie Pender seconded. Motion carried 5-0.

### **Agenda Items**

**2. Fred Chase** – Brookfield Rd. – Request for preliminary approval of a 4 lot conservation subdivision. Tax Sheet 500; Map-Lot U56-002. Zoned Farm & Forest, RCZO, LR & RP (Shoreland)

Ethan Croce explained the threshold issues: the calculation of suitable building area per lot was not submitted. The ordinance changed last Monday; prior to the change each lot needed 50%, now they need 40,000 sq feet/lot in Farm and Forest. A preliminary common open space ownership and stewardship plan was not submitted.

Bill Lunt felt that this was not a complete application with those items missing, but he felt these issues can be addressed since this is the preliminary approval and not the final.

The Board discussed whether they could give preliminary approval despite the items missing. Bill Lunt felt that they could. The Board agreed.

Ethan Croce discussed the waivers requested. The first was a waiver from the requirement to identify mature trees of greater than 15 calipers. The applicant would like to identify those trees at the building permit stage instead of at the preliminary approval stage. If the Board grants this waiver, they should provide staff and the applicant with clear guidance as to the expectation for treating those trees once they are identified. The second waiver is from the requirement for a resource impact and conservation plan. The third waiver regards the requirement to widen the road to meet the local street width requirement. This street classification would also require a sidewalk; staff assumes that the applicant is requesting a waiver from this requirement as well since there is no sidewalk shown on the plans. The final request is to narrow the pavement width of Brookfield Rd. from 22 feet to 18 feet at the cul-de-sac. The Director of Public Works said if this is intended to remain a private road, they do not object, but if it will be a public street at some point in the future Public Works would have to take a closer look at it to see if they can get their plows around the cul-de-sac. There are also variations from the road standards requested, but these do not require a waiver as conservation zoning gives the Board some flexibility in these areas.

Bill Lunt said the applicants have requested some waivers, but some of the issues raised by staff have not been formally requested. Ethan Croce said that was correct.

Betsy Poulin of Mitchell Associates, representing Fred Chase, discussed the application. The site is 23 acres at the end of Brookfield Rd. The site has been used as a gravel pit for a number of years; Mr. Chase has owned it since 1965. The site slopes toward the Presumpscot River and there is a man-made pond that outlets to the river. There are also 5 wetlands on the site, one of which is considered a high value wetland. The site has a CMP easement and an informal trail. The proposed subdivision is 4 lots. They have reworked some of the density calculations; they could have 5 lots, but are only proposing 4. 75% of the property would be

common open space. The homeownership documents have been submitted and they detail the ownership of the common open space, which is why they have requested the waiver.

Ethan Croce said a declaration of covenants and restrictions was submitted, and many of the provisions that would be in the open space stewardship plan are contained within the declaration.

Bill Lunt asked that those items that are not in the declaration be addressed somehow, whether in a separate document or in the declaration itself.

Ms. Poulin said the subdivision has been arranged so that the development is close to the residential area on Brook Rd., in order to preserve a wide expanse along the river for open space. The lots proposed are between 1 and 1.5 acre. Each lot meets the 40,000 sq foot net residential area required in the newly revised ordinance. This has not yet been submitted to staff for review.

Bill Lunt said this application is being submitted to meet the standards of the ordinance in effect prior to the amendment that was just passed. Ms. Poulin said that was correct.

Ms. Poulin said staff commented that lot 3 didn't meet the lot width requirement of 125 feet. She has corrected that on the more recent plans. This required shifting the lot lines of lot 1 slightly into the open space. She identified the conceptual building envelopes and the proposed septic locations identified on the plans; water will be extended along Brookfield, along with underground electric and cable. The water district said they could do a 4 inch main for the subdivision. They discussed a location for a fire hydrant; that would be located at the end of the exiting 8 inch main, at the end of the current Brookfield road.

Ms. Poulin addressed the waiver requests. Regarding the waiver on the trees, they don't know the exact footprint of the buildings, which would be helpful in determining the areas that would be disturbed.

Bill Lunt asked if they would have something that would address how they will protect the trees that will remain at the time of final approval.

Susan Chase, representing Fred Chase, explained that there are only about 5 trees on the site that fit the description and would need to be identified under this ordinance. According to Mr. Chase those are all dying or probably need to be removed for building purposes. The trees of most value are in the buffer zone between the old neighborhood and this new one. The only trees that they have identified by sight that fit the description will need to be removed because they are old and dying.

Bill Brogan was nervous about allowing a waiver on the identification of trees. This is a different site than is typical, but he felt they need to be careful.

Bill Lunt agreed; he thought if there were a minimal number of trees involved they would be easy to identify. He would like to ask to have the trees identified. They are only identifying those trees in the building area.

Ethan Croce said in those instances where there has been clearing allowed in the open space it would be good to identify the whole site. If the intent is to keep it as a no-disturb area, with the exception of trails and dead or dying vegetation, it would be appropriate to inventory the development area only.

Bill Lunt felt it would be good to get that wording in there for an inventory only in development areas. The Board agreed.

Ms. Poulin said the next waiver request is on the requirement for a resource conservation plan: a lot of the items that are part of this plan, they submitted on their existing resources and site analysis plan, which was revised for this submission. They are keeping a lot of the development away from the sensitive resources. Lot 1 has a significant amount of steep slopes along the rear of the lot and Lot 4 abuts the manmade pond. Lots 2 and 3 have slopes, which were identified at the site walk; the impression then was that they weren't as significant as they appeared on the survey. Those slopes are identified on the plan, but the building envelopes have not been altered in that area.

Bernie Pender said this report was supposed to tell them the impact on the area; he wasn't convinced they have done that. There are a lot of water resources along this property. The manmade pond drains into the river; he would like to see what the impact of all this is going to be.

Ms. Poulin said the drainage from the road directs the water toward the Presumpscot, which is where the site slopes naturally.

Bernie Pender understood that, but there is no development there now. Buildings, cars, etc. would introduce foreign matter to the river.

Bill Lunt asked about the increases in runoff pre- and post-development. Walt Arsenault asked if there would be a lot of re-grading.

Ms. Chase said the site was disturbed by the gravel pit and then reclaimed. There won't be a lot of disturbance and they have put in buffer zones to stay away from the pond and the steep slopes so that the disturbed area should be minimal.

Ms. Poulin said Les Berry of BH2M did the stormwater report and he said there would be no impact pre- to post-development of the project. There is a really long, naturally wooded buffer between the site and the river, which naturally treats both the quality and quantity of the stormwater.

Bill Brogan asked if they would need a waiver for an increase in the runoff. Ethan Croce said there is a provision in the ordinance that no waiver is required for an increase in flows if the site drains to the Presumpscot or the ocean.

Walt Arsenault asked for clarification that there would be no impact. Ms. Poulin said there would be a slight increase, but it would be considered no impact.

Bill Lunt asked about the request for the road width.

Ms. Poulin said the requirement is for the road to be 24 feet wide; the current road is 22 feet wide. The current width was deemed to be sufficient since there will only be 4 houses served by the extension of the road. They can ask for a formal waiver on the sidewalk, but they were not proposing one since there is no sidewalk to connect to.

Bill Lunt asked for confirmation that there is no sidewalk on the existing street. Ms. Poulin said that was correct.

Ms. Poulin said, regarding the travel width for the cul-de-sac, they can work with the town engineer as to whether it will be acceptable as designed. They would like to have this project be designed and built so that it would be possible for the Town to accept it as a public road in the future. They wanted a cul-de-sac to make it easier for busses and plows. They want to preserve the option to have this be a public road.

Bernie Pender asked for clarification of their request. Ms. Poulin said they are requesting a waiver for the general road width from 24 to 22 feet, and for the width of the cul-de-sac to be 18 feet.

Bill Lunt thought that the developer didn't have a problem with a 20 foot width in the cul-de-sac. Ms. Poulin said they would work with the engineer; she hasn't had an opportunity to do that yet.

Bill Lunt thought the engineer said that if it will remain private he wouldn't have a problem, but if it was planning to be a public road he would have to revisit it. Ethan Croce agreed that the engineer would like to take a harder look at it if they wanted to apply for the Town to take it over.

Bill Lunt suggested that, if they wanted to turn it over to the Town, it would be more cost-effective for them to build it to the 20 feet now. He didn't think the Board would have any issue with the width of the road being narrowed to 22 feet. He felt that, if they narrowed the cul-de-sac to 18 feet, the Town would not want to accept the road without it being widened to 20 feet.

Ethan Croce felt it was an easy issue to work out between now and the final submission.

Bill Lunt said they have between now and the final submission to talk to the engineer. He suggested they set that waiver aside for tonight; they can ask for it at final approval if they can convince the engineer that the 18 foot width is acceptable.

Ms. Poulin removed the waiver request on the width of the cul-de-sac.

Ms. Poulin discussed the vertical curve where the road enters the cul-de-sac. There is a 7% slope, which is required to have a 250 foot radius for the centerline. Due to the nature of this subdivision, along with the speed of traffic, the 7% grade is required to blend with the existing topography. Meeting the 250 foot centerline would require pushing the road closer to the river, which they are trying to avoid. For the sag curve entering the cul-de-sac the design standard is 25 miles per hour; no one will be driving that fast into the cul-de-sac. The 13.8K factor they have in this area would likely be acceptable for the road design. These are not waiver requests, but are deviations from the standard road design.

Bill Lunt asked for documentation from the Town Engineer and the Fire Chief that they are okay with the road as designed in the final submittal.

Ms. Poulin said they are still waiting for a letter of service availability from the water district. The HHE200 forms they submitted were based on the 5 lot design; they have been redesigned for the 4 lot design and resubmitted for review. The Town Engineer requested they model the 100 year storm for flooding; Ms. Poulin has submitted that for his review. They will add a hydrant within 500 feet of the cul-de-sac. They have revised the net residential area calculations, and will submit a trail design as part of the next submission. It will be a low-impact type of trail. She spoke with Mr. Chase about delineation between lots and open space; they would do some kind of landscaping to delineate those areas.

Bill Lunt asked how public access to the open space would be managed and laid out.

Ms. Poulin said people can come and park and walk through the trails; there will be no restriction on access. The Homeowner's Association would be responsible for maintenance.

Bill Lunt asked if the public will be able to find the trail. Ms. Poulin said there was no officially designated area to access the trail; this isn't a high traffic area.

Bill Lunt asked if the trail would be clearly marked so that people don't wander onto other people's property.

Ms. Poulin said there are some trail locations shown on the proposed site plan; they could have signage to show where they start. There are some informal trails along the CMP easement, but they can only designate what is on this property.

Bill Lunt said if people can't find the trails when they drive onto the site, it could be an issue. He suggested they place some delineation of where those areas are for people to access the open space. He felt it needed to be something obvious to prevent people from wandering around the lots.

Ms. Chase said currently the obvious access is off the current turnaround. Bill Brogan thought another way would be to add a sidewalk that terminated at the trail access point.

Walt Arsenault said they could roll some boulders and do some landscaping to set some boundaries between the lots and open space.

Ms. Chase agreed with boulders and signage. She said the turnaround makes the most sense.

Bill Lunt asked if the turnaround would stay. Ms. Poulin said it would be a great parking space for trail access. It won't be needed for a turnaround anymore.

Ethan Croce said the next submission should reflect what is being proposed regarding the open spaces access.

Bill Lunt asked about the net residential area calculations and the RP district. Ethan Croce thought they shifted the RP boundaries and the steep slope toward the southerly boundary.

Ms. Poulin said they calculated the net residential area for each of the lots; they meet the new standard.

Bill Lunt thought this was being submitted under the old rules.

Ms. Poulin said they submitted under the old standards, but they were told they need to meet the new standards since there was no substantive review of the project under the old standards. Ms. Poulin clarified that it meets both the old and new standards as it is being presented. She identified the RP zone on the plan; they added that into their calculation when she submitted the plan, she went by the description of the RP zone and not the map.

Bill Lunt asked if they have verified the actual locations on the ground. Ms. Poulin said yes, based on the survey. She added the actual zoning line from the zoning map onto this plan. They still meet the old standards.

Walt Arsenault asked about the new standards. Ms. Poulin said the project meets both the old and the new standards.

Bill Lunt said the old standard is more stringent than the new.

Ethan Croce asked about a streetlight at the cul-de-sac, and whether the Board wants one. It has historically been required by the Board, but recently the Town has taken a new position on streetlights. Only the police department advocates for a streetlight at the end of all streets.

Bill Lunt asked if the reason that the other departments don't want them was the cost once the Town takes the road. The police want them for security reasons. Ethan Croce said that was correct.

Bill Lunt asked about the location of the nearest street light. Ms. Poulin thought there was a light at the intersection of Kimberly Lane and Brookfield Rd.

Bill Lunt asked about the last time they didn't require one. Ethan Croce said they have always required one in the past, but there is no requirement in the ordinance.

Bill Lunt felt that since three of the houses are clustered around the cul-de-sac, and would have their own lighting, he didn't feel a streetlight was needed.

Bill Brogan agreed; there isn't much tree cover around there. Bernie Pender and Walt Arsenault agreed.

Bernie Pender wondered what kind of streetlight they would have; a bright street light similar to a town light or a more decorative light.

Bill Lunt thought the light spillage from the larger streetlight at Kimberly would cover this area.

Ms. Chase felt it would illuminate some of that. She felt it would be too bad to try and preserve the natural features and then add a street light. She agreed that the clustered houses at the end would illuminate the street. This is a very low traffic area.

The Board agreed to not require a street light.

Ethan Croce asked if the common open space is intended to be limited to what is listed in the covenants. Any use beyond those would require Planning Board approval.

Ms. Chase agreed it is going to be low-impact use.

Bill Lunt said if there is any change they will have to come back to the Board.

Ethan Croce asked if it would be appropriate to have a trail to the river and the pond. Those are areas that the public might want to access. Marked trails would direct the public to those areas and prevent them from wandering on private property.

Ms. Poulin agreed with a trail to the river, but the pond has steep slopes and a trail might have too much impact.

Ms. Chase said the land on the river is very dense and it is not easy to access. If they wanted a trail to go to the river it would mean cutting trees and doing some clearing. She thought people would have to find their way down to the river if they wanted to get there. She didn't know about paths; they would have to evaluate

that; it isn't an easy walk to the river. Most people ski along the power line; they intended the trails to get to the easy access.

Bill Lunt asked for marking on the plans for trails to that easy access. He asked them to evaluate the river access for final submission. He didn't want to see a lot of trail work to get access.

Ms. Chase agreed to evaluate it.

Bernie Pender asked about the maintenance of the CMP trail. Bill Lunt asked if the CMP land is a right of way or in fee.

Ms. Poulin said it is an easement; she thought the fee title went to this property but she would have to check.

Bill Lunt said they would have to have CMP's permission to maintain the trail. He asked how they have dealt with this in the past.

Ethan Croce said the school submitted a letter from CMP showing that CMP was okay with them maintaining the trails.

Bill Lunt asked that the applicants get a letter from CMP agreeing to their doing the maintenance.

Bernie Pender asked about the no-disturb buffer zone; in the past they have required a designation of that with protections in place. He asked if they have anything planned for protections on those zones on the ground, i.e. signs, snow fencing, etc.

Ethan Croce said that is a requirement on final plans, that snow fencing be installed to demarcate those areas prior to construction.

Bernie Pender asked about the declaration of covenants. In the rights of the declarant, section 8.1.3., it says the declarant can appoint and remove all the officers of the association and members of the executive board, and veto any actions of the association. He wasn't sure this was fair to the other members

Ms. Chase said that was only if the declarant owns two or more lots, which would mean that there were only 1 or 2 other lot owners.

Bernie Pender asked if they are maintaining other land in that area. Ms. Chase said this is the only land in this area that Mr. Chase owns.

Bernie Pender asked if they could retain an unbuildable lot and still maintain control of the subdivision. Ms. Chase said all the land Mr. Chase owns in this area is shown on the plan.

Bill Lunt said there are only 4 lots in this subdivision; he felt the reason for this provision was that, until the balance of power shifts beyond the 50% level, this prevents a stalemate. As soon as the third lot is sold then the applicant only owns one lot, and doesn't have any more say than any other lot owner.

Bernie Pender was concerned because in a previous project, the developer maintained ownership of lots, didn't sell them, and maintained control of the subdivision.

Bill Lunt felt that, after the majority of lots were sold, the supermajority would go away in this case. Ms. Chase confirmed that the intention was to sell all the lots. Neither she nor Mr. Chase was planning to live there.

Bernie Pender was concerned with changes to the subdivision after the fact, in case one lot was sold and the developer maintained ownership of the remaining lots.

Bill Lunt felt the developer was the one that held all the risk. He didn't have a problem with it the way it is. He asked if the Board has the ability to stop them. Ethan Croce said that, under appendix 8, the Board has to approve all Homeowner's Association documents.

Ms. Chase asked if there were other protections for the homeowners.

Bill Lunt said this document has to be reviewed by the Town Attorney anyway.

Ethan Croce said that was correct. The issue is how to break a tie; he felt the balance of power, in the case of a tie, typically tips toward the developer.

Ms. Chase said the developer has the most interest to preserve the value of the property, and so would be acting in the best interest of the neighborhood.

Bill Brogan said the buyers will have to read this document.

Bernie Pender asked to confirm that the Town Attorney will review this anyway. Ethan Croce said that was correct.

Bill Lunt felt the consensus of the Board was that it was fine as it is, unless the Town Attorney has a problem with it.

Ethan Croce said the Board needed to make a finding that the setbacks being proposed, and the buildings envelopes being created, meet the criteria of section 3.13. Under resource conservation zoning, the Board can authorize setbacks below the underlying zoning if it meets the four criteria. The Board should make a formal finding that the reduced setbacks requested meet those criteria. It makes it harder to make that determination without the identification of the trees, so this finding could wait until final approval.

Bill Lunt agreed; it is hard to make that finding without that information. The Board agreed to make that finding at the final approval.

Public comment period opened; no public comment.

Bill Lunt asked for the Board to address the requested modifications of the street standards. The Board agreed with the proposed street design.

Bernie Pender moved to grant a waiver on submitting the identification of trees at preliminary approval; this identification will be required at final approval. Bill Brogan seconded. Motion carried 5-0.

Bernie Pender moved to waive the requirement for an open space resource impact and conservation plan, with the expectation that the information that would normally be included in that plan will be included in the covenants and declarations for the project. Bill Brogan seconded. Motion carried 5-0.

Bill Brogan moved to waive the required width of the local portion of the road from 24 feet to 22 feet wide; Bernie Pender seconded. Motion carried 5-0.

Bill Brogan moved to waive the requirement for a sidewalk connection; this property doesn't abut any other sidewalks and the project is so small it doesn't need a sidewalk. Bernie Pender seconded. Motion carried 5-0.

The request for a waiver for the width of the cul-de-sac was withdrawn by the applicant.

Ethan Croce read the conditions of approval into the record. The applicant agreed with the conditions as read.

Bernie Pender moved to grant preliminary approval with the conditions as read by staff; Bill Brogan seconded. Motion carried 5-0.

Meeting adjourned 8:25 pm.

Respectfully submitted,

Melissa Tryon  
Recording Secretary