

Draft Meeting Notes
CDC/CPAC Natural Resources Review Meeting
Thursday, 15, 2008
Falmouth Town Hall, Large Conference Room

Attendance

CDC: Councilor Joe Wrobleski, Councilor Bonny Rodden
CPAC: David Chase, Lissa Robinson, Hugh Smith, Jim Thibodeau
Consultant: Beth Della Valle, Jeff Simmons
Town Staff: Theo Holtwijk
Public: Bill Gardiner, Councilor Goggin

Materials Submitted:

1. Agenda, May 15, 2008
2. Falmouth Natural Resources 5/8/2008 Community Workshop, Summary of Comments/Questions Part I
3. Falmouth Natural Resources 5/8/2008 Community Workshop, Summary of Comments/Questions Part II

Joe Wrobleski opened the meeting at approximately 7:07 PM.

Review of Community Workshop Feedback

Joe asked for general comments on the workshop session. Comments ranged from a feeling that supporters may have been intimidated from speaking out, that the specific responses that were made were appreciated, that few people understood what was being proposed, that it was “Groundhog Day” in that the same comments were being made from a few years ago, that landowners have the right to vent, disappointment that landowners mostly did vent, that policy makers would have a hard time finding the balance that was needed, to a feeling that a matrix of current rules versus proposed rules would have been helpful.

Joe commented that he hoped the italicized comments throughout the policy document would have addressed that.

David felt that people were saying “enough is enough” and he predicted a push back or power shift. He felt that the regulation could be best done through the open space plan. He was OK on vernal pool rules, but had problems with the wetlands proposal. He felt the proposal needed to be flexible, be density neutral, have a way to pay for it, and perhaps have increased density as an incentive. He would have liked to have public feedback sooner.

Anne Goggin gave a recap of past issues that indicated where the committee’s charge came from. They included: fixing the definition of vernal pool, how do vernal pools get on, or off, the official map, what about finger wetlands and deal with wetland crossings. She was advocating an “elephant” solution:” find a way where the elephant is worth more alive than dead, then people will preserve the elephant. She suggested creating benefits

to encourage vernal pool protection, such as reduced setbacks or reduced lot sizes in subdivisions that protected more land than required.

Joe agreed that approaching density neutral was something to aim towards, but was not sure it could actually be achieved.

David felt that conservation zoning should be used as a guideline, not a requirement. He felt the Planning Board needed to be given flexibility and cited the Town of Lincoln, MA as an example, where some goals were laid out and developers are then asked to show how those goals could best be met.

Joe suggested that the Committee review each comment in the first portion of the Part II document. Before that the group discussed its direction. Jim stated that what he thought the group had come up with was not in the documents. He gave as an example the stormwater language. It was stated by others that other compromises had been made, but that Jim was not with the group's consensus on that one.

Beth stated that the comment/question list was put by her in roughly the order of the policy document.

1. Why is Falmouth deviating from state rules?

The consultant can and will provide a matrix comparison between Town and State as long as it is not limited to one page. Perhaps the hard facts could be placed in a shorter version. The answer is that the state standards are somewhat based on politics, and that a local need to address these issues was felt. The matrix will show that the local rules are based on science and some level of political sensitivity. Anne stated that when state vernal pool rules were being debated, people were clamoring for local control and that what Falmouth was doing was just that.

2. Like to see comparison with state rules and Army Corps.

See #1 above.

3. Wetlands definition? 100 year flood zone

This is State of Maine definition language that is carried forward.

4. How do I know if I have a significant vernal pool?

One will have to hire a professional to determine that.

5. Who will identify egg masses?

See #4 above.

6. Need more specifics to identify resources

This commenter did not read the document closely enough as that detail is in there. The group then realized it was with reference to the use of the word "may." It was stated that that word sometimes is appropriate.

7. Is "dry out" in July/August affected by rain/snowfall run-off.

8. How define "precipitation", "dry out"? Quantify it. Avoid subjective debate.

The group wants to follow the guidance from the State on this issue.

9. *Concern over time frame to map*

10. *Clarification of inspection dates*

The group wants to follow the State's lead on this, unless the science suggests otherwise.

11. *Potential vernal pools - ?? – why should we regulate*

Joe felt that Aram Calhoun's response at the meeting was on point. He also saw it as more information for the Planning Board to help it make decisions. Jim felt that incentives should be create to help protect potential vernal pools and that a variation of standards may be appropriate.

12. *What if ecosystem changes in 10 years?*

The group stated that a field inventory would be done at the time when a development proposal comes forward. Any ecosystem changes would be captured that way. The group wants to follow the State's lead on this.

13. *Does the Planning Board tell us what to do or does the designer develop a plan?*

The designer develops the plan.

14. *Concern about "net buildable area"*

The group has not had the discussion if, and to what extent, the definition of net buildable area should be revised and if setback areas should be deducted or not. Some members expressed opposition to the idea of including a deduction of setback areas. There was a suggestion made that a geographic distinction could help to steer development to areas where the Town wants to see it happen.

15. *Put "density neutral" in the legislation*

Jim felt it was a good tool to include. David felt it could not be guaranteed, but was leaning to density neutral. Hugh wanted to keep incentives on the table. In general, the group agreed that its intent is not to reduce density, but to protect the resource. At this point, it has not fully explored the use of density as one of the tools in the toolbox, but its goal is to attempt to be density neutral and to explore incentives, where appropriate, when it gets to the stage of preparing ordinance language; but that the ultimate goal is to protect the resources. Beth pointed out two areas (in the glossary and in miscellaneous notes) where guidelines intended to minimize the impacts of alterations are described, where the proposed policy clearly states that "a reduction in the number of lots or square footage of structures or require[ing] taller buildings with a smaller footprint to avoid/reduce impacts" may not be required.

16. *Wetland exceptions – what happens to lots not yet approved by Planning Board?*

The standard is expected to be followed. Alterations to structures are OK.

17. *Concerned with "finger" wetlands*

18. *In "finger" wetlands – drainage ditches covered?*

Drainage ditches are excluded. One needs a permit to fill 4,300 sf of wetland.

19. Allowance for land on thoroughfares?

With “thoroughfare” is meant a farm ditch, which is exempt. The group wanted to make sure it referred to active farming (so exemptions could not be used to turn farm fields into subdivisions), and that timber harvesting was included in the exemptions as well.

20. Subsect. 1.B/25% 100-750' Typo? Pg. 8: Vernal Pool Regulatory change?

This was indeed an error: 750 feet should be 250 feet.

21. Pg 9 subsect. D2: Threshold – 2000 sq ft rationale? Need info on B + C.

Beth will check the notes to see where the 2000 sf reference came from.

22. Pg 11, item 4: 100' setback. Property owners could be affected. – CEO discussion

23. Page 4 – existing dev. Property – within 100 feet of nestr. [resource?]

24. How the “minimum impact” would be determined – CEO/ZBA

The group agreed that wording in this section was complicated and should be rewritten. The idea was who should permit, say, a replacement septic system if it cannot meet the setback requirement: CEO or ZBA? The group decided not to place this question in the parking lot and wanted to leave it with the ZBA. Additions to nonconforming structures that are away from the resource are OK. The group was wondering where that was written in the current ordinance.

25. General mitigation? Specifics? What is it? What is it not?

26. Mitigation – compensation/distinction. Who does it work?

David felt it was confusing when mitigation would kick in. Is there a requirement to mitigate buffers, he wondered. Mitigation is required when there is an impact on the resource itself. The group decided to add some buffer flexibility.

27. Vertical impact on vernal pool – fly over?

Yes, one can fly over vernal pools. Regulation of overhead power lines over vernal pools has not yet been addressed.

28. “Only” 100-200’ – football field = 300’. Bugs me. Setback – ACRES.

The group felt that continuing to make reference to “feet” rather than “acres” was the best way to go.

Joe felt that with these revisions the concepts were ready to go to Council for review. He recommended that a reference to incentives would be added as well as the approach to being density neutral. He felt the group could then focus on steep slopes and invasive species. He recognized that the devil is in the details, but felt that generally it was a good product.

Dave said he wanted to see the details before he could vote on sending this to the council. He wondered what the benefit was of taking this to the council at this time.

Jim felt that this policy even if it were endorsed by the council was not cast in stone and could be altered later on. An example he mentioned was that he did not realize that roads were considered “structures” and are subject to the required setbacks.

Hugh disagreed with future concept alterations and said that developer input had been sought and incorporated. Lissa agreed that old issues were being brought up again. Neither wanted to debate it all again.

Joe felt there was no argument on the science concerning vernal pools. Jim felt it was more a wetlands issue. Joe said it was the intent [with proposed wetlands policy](#) to be density neutral. It was stated that the State required 75 feet setback that could be 25 feet with a Permit By Rule. The Town is proposing to go from 100 feet to 250 feet. The test of all this is when ordinance language is developed.

Joe recommended that development of ordinance language not be a CDC project, but instead be left to CPAC (or a future LPAC).

Bonnie stated that a comparison matrix would be helpful. A debate on the science of wetland setbacks followed. Joe then recapped what he would recommend to the Council: OK on the concept proposals, appropriation of sufficient funding to allow consultant to work up ordinance language and work on other issues (steep slopes and invasive species). Theo reminded the group that it had also discussed surface waters and shoreland zoning, and that the latter had a required completion deadline.

The group then voted to send the package to the council for review. It passed 4-2 (David and Jim opposed). Joe stated that this item would be on 5/27 Council agenda.

Next meeting agenda, date, and time

The group agreed that, pending council action, it did not make sense to meet. If the council wanted more concept work done on vernal pools and wetlands, then that should be done, before delving into another topic, such as steep slopes.

Adjourn

The meeting was adjourned at 10:55 p.m.

Draft minutes prepared by Theo Holtwijk, May 19, 2008