

**Town of Cape Elizabeth
Comprehensive Plan Committee**

May 25, 2006

Barbara Schenkel, Chair
Julia Beckett, Vice Chair
Anne Swift-Kayatta
Bob Dodd
Dave Griffin

Frank Strout
Mary Beth Richardson
Mary Ann Lynch
Skip Murray

The minutes were adopted without amendment by unanimous vote.

Ms. Lynch asked about the status of the Town Council request for a recommendation on formula restaurants.

Mrs. Schenkel said that the committee would consider the request when the draft was complete. The comprehensive plan won't change the zoning but rather recommend a policy which will then need zoning changes to implement.

Mrs. Swift-Kayatta and Mr. Strout agreed that the committee should consider it at the end of the plan development.

Emails

Mrs. Beckett asked about the email from Mrs. Perez Smith regarding a suggested sidewalk location. She felt it was a valid suggestion.

Mrs. Schenkel said that the committee agreed to look at all the correspondence at the end of the development of the plan, when there will be a review of all chapters. She referenced the committee schedule, which has designated meetings for review of the complete draft.

Mrs. Swift-Kayatta concurred that the committee should complete the chapters and then go back to address the correspondence, otherwise the committee would keep looping back to chapters already drafted and not be able to complete the plan.

Mr. Dodd asked if the public water supply should be included in the water resources chapter. Ms. O'Meara suggested that should be included as a utility in the public facilities section. Mrs. Swift-Kayatta said that it should be noted that water supply should be in the utilities section.

Scheduling

The committee scheduled additional meetings, changed the third public forum date and extended the completion date to February, 2007.

Marine Resources

Mr. Griffin suggested that the recommendation that another boat ramp be developed puts a burden on the town. A boat ramp needs a parking lot.

Mr. Herrick said that the recommendation is for a study only. Mrs. Schenkel concurred.

Mr. Murray noted that if a boat ramp is developed in Fort Williams, parking is already available.

Mr. Strout said the most logical locations are either Fort Williams or Two Lights by the Lobster Shack.

Ms. Lynch noted that Two Lights may have access from federal land although there is private, fenced land there. She questioned whether there are ample facilities in South Portland.

Mr. Murray said there are increased costs using boat ramps in other towns.

Mr. Griffin explained that South Portland charges an annual fee to launch a boat. The parking lot is not full and it is a revenue builder for South Portland.

Mrs. Swift-Kayatta said that Cape Elizabeth does not have to duplicate every service available in other towns.

Mrs. Beckett said that we wanted to consider another ramp to avoid clogging up the commercial fishing boat ramp.

Mr. Strout pointed out that the WETeam can't always get access to the commercial boat ramp.

Mr. Murray said a second ramp could take the pressure off the commercial ramp.

Mrs. Swift-Kayatta said that Kettle Cove State Park is actually part of Crescent Beach, so that should be reworded.

Mr. Strout suggested that "existing" be deleted from the shell fishing recommendation, which the committee supported.

Recommendation 1 was unanimously approved. Recommendation 2 was approved by a vote of 8-1 (Lynch). Recommendation 3 was unanimously approved. The map will also be revised to add mooring location names.

Water Resources

Mrs. Swift-Kayatta asked about the overboard discharges. Ms. O'Meara explained that they are licensed discharges of sanitary waste to the Atlantic Ocean that is treated but not passed through a leach field. She will be getting more information on the exact locations.

Mr. Strout asked what happens when the system fails.

Mr. Murray offered that a system in Pond Cove had been replaced with a high tech oxypro system that uses the discharge for irrigation.

Mrs. Lynch requested more information on the number and location of overboard discharges.

Mrs. Richardson noted that elimination of overboard discharges is a DEP goal.

Ms. Lynch objected to including information in the draft that boats are stored on private property adjacent to Great Pond.

Committee members discussed removing this information because people will use the area to store their boats. Mr. Herrick said that this is a statement of fact and the Town is working with the Sprague Corporation on this issue. The committee agreed to leave the information in, but to add that boat storage was on private property without permission.

Ms. Lynch said she was struck by the number of water bodies without formal names. She suggested the Town should undertake an effort to name them. This was added as a recommendation.

Mrs. Swift-Kayatta asked what shoreland zoning changes are included in the recommendation. Ms. O'Meara offered a copy of the changes and a summary and explained this is a mandatory state requirement.

Mrs. Schenkel said it doesn't matter what the changes are if we have to do them anyway.

Mr. Strout asked why we are recommending that we retain existing town regulations. Is there any consideration for repealing them? Committee members said we recommend retain existing regulations to demonstrate compliance with state comprehensive planning goals.

Mrs. Beckett asked about the Town easement on Sprague property adjacent to Great Pond and how it was being changed. The Town is working jointly with the Sprague Corporation to clarify the language, not fundamentally change the easement terms.

Mr. Griffin asked how we would police Recommendation 3. Mrs. Schenkel said that we need stricter monitoring. Mr. Griffin supported keeping Recommendation 3.

Ms. Lynch said that there is another side to the preservation of buffers issue. Without vegetation management, views are lost.

Mrs. Richardson asked about protection of small streams. With people clearing vegetation and creating lawns, there is a big impact from fertilizers, runoff, etc.

Mr. Strout said that when you get off the coast of Cape Elizabeth and look to land from the water, you can easily see where fertilizer is being used.

Mrs. Richardson said we need to educate people to change their idea of how they impact water resources.

Ms. Lynch asked who would be assigned this?

Mr. Murray suggested that the CEO is in charge of inspecting filling of wetlands and could be responsible for this.

Mr. Herrick asked what happens with a wetland violation?

Mrs. Swift-Kayatta said that she would want more information before she would eliminate Recommendation 4.

Ms. Lynch suggested a fifth recommendation, "The Town, working with private land owners where appropriate, should investigate adopting names unnamed water bodies to aid in identification and public awareness." She agreed to change the format to match the other recommendations.

The committee agreed to include the Water Resources Chapter in the Public Forum even though no vote to adopt the recommendations has been taken yet.

Critical Natural Resources

Ms. O'Meara gave an overview of the chapter and the maps. She noted that almost all the critical areas are located in the same parts of town and that those areas are already protected by existing wetland regulations. The committee should consider taking the position that the Town's existing regulations are sufficient to meet state goals.

Ms. Lynch questioned the legal implications of showing rare animal habitats, and other areas on private property. Some of the areas are undeveloped, but some are located in neighborhoods. She requested the basis for establishing the critical area circles.

Mrs. Richardson said shore birds have been a focus in Cape.

Mrs. Swift-Kayatta requested information on the basis for the mapping. She is concerned that showing these areas on the map will be used as an excuse for opposing any activity on that property. She referenced the debate over the tower overlay district.

Mr. Murray said we should be careful with what we implement.

Mrs. Richardson said that the town regulations do discourage alterations in sensitive areas. The DEP does not see a lot of applications for wetland alterations in Cape Elizabeth. She will get updated information on wetland alterations for Cape and comparable communities. The updated data does not include alterations of less than 4,300 sq. ft, but in Cape Elizabeth even those alterations are regulated at the local level.

Mr. Herrick raised the issue of scenic views. He thinks scenic views are important to town residents. Shore Rd, Fort Williams, Reef Rd and Broad Cove are very popular. He wishes we could address this. Perhaps the Town could establish a commission to see what could be done.

Ms. O'Meara was asked to describe the efforts to adopt scenic regulations in 1997. She explained that scenic overlay districts were developed based on the Visual Resources Assessment Study. The districts were revised, weakened and then deleted from the new Zoning Ordinance.

Ms. Lynch suggested that a more significant impact may be from the tear down and replacement of homes with larger homes.

Mr. Herrick described a visual easement he is familiar with in Shore Acres where the property is restricted to a one-story home .

Ms. Lynch said that there is a view easement over her lawn. View easements are a good idea in terms of design.

Mr. Griffin suggested the examples provided underscore that this issue should be handled by private agreement.

Mrs. Schenkel suggested a recommendation that maximizes view easements.

Mrs. Swift-Kayatta said she would hesitate to say that. She is concerned with someone buying a house lot and then an easement goes on it afterward.

The committee agreed to not make a recommendation on preservation of scenic views.

Mrs. Schenkel suggested a recommendation that the Town delineate significant vernal pools.

Mrs. Richardson suggested that, in light of the new regulations adopted by the Maine Legislature that will take effect next year, the Town should start mapping vernal pools. We could train volunteers to map them with the property owner's permission.

Mr. Strout said he knows a local farmer who called DEP with serious concerns that if a vernal pool is located on his farm, he may have to cease and desist his activities.

Mrs. Richardson said that she believed there is an exemption for agriculture. She said that if the vernal pool is significant, there would be a 75' setback and within 250' of the vernal pool, only a percentage of development would be allowed.

Mrs. Swift-Kayatta questioned why the Town should spend money to map vernal pools when, with the new regulations, private developers will have to pay to do it as needed.

Mrs. Richardson said the mapping would be a good planning tool.

Mrs. Swift-Kayatta suggested that the State should pay for the mapping.

Mrs. Schenkel asked if the committee wanted to support a recommendation.

Mr. Strout said he would not support it until he knew what the implications were of having a vernal pool on your property.

Ms. Lynch said that she didn't see the town undertaking the state vernal pool initiative.

Mrs. Swift-Kayatta said she was supportive of protecting vernal pools but does not want the town to spend money to map them.

Mr. Murray said that no pools would be destroyed under the Cape wetlands review process.

Mrs. Beckett asked how vernal pools would be handled through town development review. Ms. O'Meara said that because vernal pools likely include hydric soils, they would be picked up under the wetland regulations.

Recommendation 2 was proposed to "Confirm that the existing Resource Protection Permit process includes delineation of significant vernal pools."

Mrs. Schenkel requested that the sources of information be added to the maps.

The committee reviewed the wetland chart and agreed to eliminate the right hand column as confusing.

Mr. Herrick said that when he has met with the Conservation Commission Chairs for South Portland and Scarborough, those chairs have said that there is less development in Cape Elizabeth because of the local wetland regulations.

The committee discussed eliminating the wetland chart. Ms. O'Meara said that if the Town wants to take the position that the existing wetland regulations provide adequate protection to meet state goals, the town needs to show there is some basis for suggesting

the regulations are effective. If the chart is deleted, some other information needs to be developed.

Mrs. Schenkel said that the total acres filled in the chart shows that the current wetland regulations are effective.

Ms. Lynch supports conservation but is concerned with the habitat circles on the map. Cape already has more wetland protection than other towns. We are penalizing Cape property owners more than property owners in other towns. We may need to revisit the wetland setback. Scarborough has a 25' wetland setback. There is a cumulative impact and we are already starting out extraordinarily protective.

Mr. Strout agreed.

Mrs. Swift-Kayatta said that using the information as info is fine. She is not in favor of cutting back wetland regulations. She supports the overlapping circles concept that existing regulations are protecting most critical areas.

Mrs. Richardson wanted to clarify that the chart only shows wetland alterations exceeding 4,300 sq. ft.

The committee agreed to include this chapter in the public forum.

Mr. Dodd questioned where the recommendation to reduce the wetland setback to 100' for the business district is placed. The committee placed it in the Economy Section.

Public Comment

Mr. John Greene, representing the Sprague Corporation, said that the Town does not need a new set of regulations. The existing wetland regulations are doing a good job. He is concerned with the scenic view question because it would be a big restriction on property rights, perhaps a taking. The critical resources mapping is general and he is sure there is not good public information on what is on the Sprague property.

Public Forum

The committee agreed not to televise the public forum in order to encourage people to participate who might be intimidated by a more formal structure to the meeting. Staff is directed to prepare a flyer for the forum similar to the first forum flyer. Committee members will receive the flyer by email and circulate it to increase attendance. Staff is directed to post all chapters, including the last two which have not been voted on, on the town website. Committee members agreed to present the various chapter recommendations, with 5 minutes allotted for each chapter. Staff will prepare bullet presentation sheets for the public forum and will email them to committee members prior to the public forum.

Meeting adjourned at 10:05 p.m.

Respectfully submitted,

Maureen O'Meara
Town Planner