

Town of Kennebunk

Planning Board

Meeting Minutes

Monday, September 9th, 2019

Present: Chris MacClinchy—Chair; Richard B. Smith—Vice Chair; Janice Vance; Robert Metcalf; Edward Trainer—Alt.; David Smith—Secretary

Also Attending: John Stoll—Town Planner

I. Open Meeting

C. MacClinchy opened the meeting at approximately 7:00 PM. Today is Monday, September 9th, 2019

II. Workshop

A. Proposed Wetland Mitigation Ordinance - Conservation Commission

C. MacClinchy introduces a workshop with the proposed wetland mitigation ordinance with the Conservation Commission.

J. Stoll states that the Board had asked for a table of the recently approved wetland impact projects. He notes that the Conservation Commission provided that and a cover letter. He states that [the Conservation Commission] has worked with him “on this” and have done a “good job.” He notes that he is still confused about the organization, but that this is his “fault.” He notes that they were considering separating the “shoreland section” out into its “own independent area,” rather than having it in just the performance standards. He notes that the application procedures are now in article 10 because he didn’t know where else to have them put. He states that it feels a little “disorganized” but that the content [of the document] “seems fine.” He states that [the Board] has been provided the wetland impact [and] a redline document with strike-throughs, that would be an actual ordinance acceptable document.

Jennifer Shack introduces herself from the Conservation Commission as the Co-Chair. She asks where [the Board members would like her to] “start.” C. MacClinchy advises [that the Board members would like her to start] at the “beginning.”

J. Shack states that they could start with the table. She notes that the few projects that have taken place in the past year, there were 4 projects with an average impact of 2,700-square feet, for a total of 10,800-square feet. She notes that a “couple are in progress.” She states that they did calculations about what the cost would be for the wetland impact based on a formula. She notes that they are using a formula that the State of Maine uses. She notes that the average cost per square foot of restoration, plus the average cost of land in Kennebunk [is part of the formula]. She states that the average cost of restoration is \$3.61 per square foot. She states that Todd Bridgeo,

who is their “engineer Commission member,” did some calculations about the average cost of land in Kennebunk based off of the assessor. She notes that T. Bridgeo “came up with” \$0.87 per square foot. She notes that the total would be \$4.48 per square foot, or approximately 4,500 per thousand square feet. She notes that [T. Bridgeo] did say that there were some assumptions that were made so the number [could be] a little “bit off.” She notes that one question they had talked about [concerned] exempting access roads to a single lot of record. She wonders if there could be a consideration for a “certain minimum” for these [situations].

R. Metcalf states that when he looked “at these,” the one “for Thompson [Road]” was an exceptionally large [wetland fill] that was for access to two-lots. He states that he will have J. Stoll respond to Orrin’s Way [as the Board] has a comment from [the Code Officer] which [states that the application] doesn’t have to come to [the Board] for them to permit [the wetland fill] because the wetland is less than an acre. He notes that this is an unusual amount of fill. He wonders if the “Western [Avenue] one” is the “garage.” J. Stoll states, “yes.” R. Metcalf notes that this was extraordinary [as the wetland fill] wasn’t for a crossing [but was] for storage. He notes that the number is skewed [because of these factors from these different projects, and he suggests the Conservation Commission] go over the last three-years [of wetland fill projects] to come up with the average. He notes that most are for driveways that were under 1,000-square feet. R. Smith adds that most were an average [wetland fill] of 700-750-square feet.

J. Shack wonders if the next step is [showing the Board] the three-year average. R. Metcalf notes that this would be [helpful] to refine the numbers.

C. MacClinchy states that it would be interesting to see what the cost would be, but that [the Conservation Commission already had given the Board] a “breakdown of cost.”

R. Metcalf states that what he is talking about is an exception. He notes that [J. Shack] was concerned that the square footage is more than the average. He notes that [the Board] needs a “better handle” on what the traditional amount of fill is.

J. Shack states that they will “table” this question until they have more information.

C. MacClinchy wonders if [the Board and Conservation Commission representatives] want to go through the ordinance revisions.

J. Stoll states that [this document] is disorganized “because of me.” He notes that “this specific language” is under the wetland definition but it could be done alphabetically. He notes that he was trying to make [the document] “make sense” from an “easy-to-read” [standpoint].

J. Shack notes that she likes this way of organizing [the document]. She notes that there is an inland wetland definition that was “way earlier” that she “missed,” so it is still there.

C. MacClinchy notes that under the wetland definition [the Conservation Commission] has “basically” taken the State’s language. J. Shack notes that the Army Corps [of Engineer’s] definitions are from NRPA. She notes that she did make changes to have it “read better.”

C. MacClinchy states that he doesn't know what definitions "we have," but that it is "clearly helpful" to have the definitions in "one spot" for the various wetlands. He states that he thinks that is a benefit and having them match up for the standards the applicant needs to review.

C. MacClinchy states that the shoreland zoning will reference the definition section.

J. Shack notes that everything that is "red-lined" is "brand-new."

J. Stoll wonders what the Board thinks [about having] all the wetland references in one section. [The board thinks this is a good idea].

C. MacClinchy begins reviewing the revisions under article 10. He wonders if this is shoreland zoning. J. Stoll states, "yes."

J. Shack wonders if it makes sense to do something different [concerning the fact that the application processes under article 10C10 is a "big section"] so it becomes a "top level item."

J. Stoll states that the problem is that where article 10 is won't be easy to find the information [which] is where he gets concerned that maybe it [requires] a considerable reorganization of the section or putting it in a separate article.

R. Smith wonders what would be the downside of putting [the information] in its own section. J. Stoll states that there isn't [a downside], in his opinion, [as it] makes the ordinance a lot easier for someone to learn.

R. Metcalf notes that it would make [the information] clearer, [but to ensure that the section is] cross referenced. R. Smith adds that it would make [the information] a focal point.

J. Shack wonders if what the applicant is required to do [in the application process] for wetland [fill]. J. Stoll states that it doesn't require "anything" unless [the area] qualifies for special exception, then there are vaguely defined processes in article 10. He notes that it makes more sense to pull [the information] out and reorganize it by making it its own article so it is clear and easy to use. J. Vance agrees. J. Stoll states that it would be article 15. J. Shack asks if J. Stoll could [reorganize this for the Conservation Commission]. J. Stoll states [that he can].

C. MacClinchy notes that [the Board] wants to go through the application process that [the Conservation Commission] has laid out.

J. Shack notes that [the information] is all the same as before. C. MacClinchy notes that [the Conservation Commission] added the mitigation plan.

J. Shack notes that there are two questions [the Conservation Commission] has under the project plan, which is P3.

R. Metcalf notes that he will make one comment before he forgets. He notes that [concerning] mitigation plan with the wetland specialist, [the Board] wants to hold a provision just like the wetland delineation that [the Board] can require review by a competent peer review just to make

sure [the standards] are adhered to. R. Smith adds that [this would be] paid for by the applicant. J. Shack wonders what number [this would be related to]. J. Vance notes that it is number 2C.

C. MacClinchy references 10B. He wonders what [the Board] would review and what the criteria is for those impacts.

R. Metcalf states that it falls under the jurisdiction of the Planning Board and the Site Review Board. He notes that when [the Board] asked for the table to “get a handle on” what the average area of wetland fill that this Board has looked at [in the past] for crossings, he thinks [the Board] needs to look at being reasonable in terms of not having impact fees if someone has a lot of record and wants to get access. He states that he is a little “apprehensive” about the numbers. He wonders if [the Conservation Commission] is looking for impact in the setback areas as well. He notes that where [the area] is shoreland regulated with a 25-foot setback, if [the applicant] has to cross that wetland they will be impacting the wetland on both sides. He notes that this would increase if [the Board] looks at the square footage of only the impacted area. He notes that [the Board] does grant waivers for the amount of fill in the setback.

J. Shack wonders if [R. Metcalf] is suggesting that [the Conservation Commission] do “something different” for priority 3 [wetlands].

R. Metcalf states that for priority 1 and 2 [wetlands] there are exceptions that are under the State to reduce the setbacks. He notes that if [the Town] looks at the impact and not of the buffer, he feels like [the Town] should [not] be assessing if there is an impact to the buffer areas. He clarifies that [this applies] to any place there is a buffer.

R. Smith wonders if [R. Metcalf is referring just to] access roads. R. Metcalf states that [he is referring to] any buffer. He notes that [the Board has looked] at the impact in the buffer. He notes that the DEP permits it, [but that the Board] is only looking at the wetland with the shoreland [zoning]. He notes that there are setbacks that won’t change, but [that the Board] doesn’t deduct [these setbacks] as an impact with implications.

C. MacClinchy states that [the Board] has given applicants a “hard time” with driveways with a turn-around in a setback area.

R. Metcalf states that it is assessed as an impact, [but in terms of this] assessing fee for impacts, [the Board] shouldn’t be assessing fees with upland areas as part of a buffer. He notes that [the Board] can “push back” on how much [the applicant] can encroach on a buffer area, [but that] as far as an impact, he disagrees with having a fee with upland impact areas.

C. MacClinchy states that he would assume that [the Board] would treat the areas as wetland areas, as they are important in protecting the wetland. He notes that [the Conservation Commission] is asking [the Board] to consider a fee [surrounding this issue].

D. Smith states that when [the Board has] looked at wetland, they didn’t look at the upland. He notes that a vernal pool he would love to preserve as much as 750-feet, if possible, but he thinks it [would be] less than that. J. Shack adds that it is 250-feet. D. Smith states that he is concerned

about saving the vernal pools but not the surrounding areas.

R. Metcalf notes that vernal pools are a “different animal.” He notes that it is 250-feet around a significant [vernal pool], with a 100-foot undisturbed buffer [and] 25% beyond that can be cleared. He notes that it is not an undisturbed area. He states that wetlands are different. He notes that the State doesn’t have setback requirements as far as wetlands, [but that the Board] has imposed setbacks. He notes that with shoreland zoning it is different, because the resource is defined. He states that they are talking about wetland impacts that are not regulated by the State. He notes that they can review it but if the State gives a permit, then [the Board] can be challenged. He states that [the Board] has never looked at an application and stopped it from moving [on] that [already was approved by the] DEP and Army Corps [of Engineers]. He notes that the priority 3 wetlands are permit by rule. He states that [the Town has put priority 3 permit by rule] into shoreland zoning, and the State has incorporated it into their language.

R. Smith asks to “go back” to the discussion concerning the uplands buffer area. He wonders why the Conservation Commission feels that it is important to make “that change” to protect the buffer area.

J. Shack notes that the reason [is that] the wetlands require a buffer to exist and thrive and if there is [an application that is] disturbing the buffer then [this action] would do more damage. She notes that the [Conservation Commission] wants something [the Board] is comfortable with, [but also] has a “little bit of teeth” that can go forward.

E. Trainer states that [the Conservation Commission] is stating that the buffer is important for the wetland and the [counter] argument is that it isn’t important. He notes that if the mission is to protect the wetlands, what is the argument.

R. Metcalf notes that the impact is to the wetland [and that] a mitigation plan shouldn’t be assessing the fee to the buffer. He notes that [the mitigation plan] is talking about a wetland. He states that he has an issue with that for the [applications] for road crossings that are trying to fill wetlands and buffers. He notes that [the Board] has had projects where the applicant wanted to impact 1,000-square feet of wetland to connect to the pockets of upland.

E. Trainer states that there are “other parts” of assessing the wetlands that are not related to a possible mitigation fee. He wonders if this is not for the consideration of the buffer in cases where there is a mitigation fee involved, or if [not considering the buffers is a general approach].

R. Metcalf states that he is saying in general that [the Town] should not be assessing the buffer impacts.

E. Trainer wonders if [R. Metcalf’s] argument is that it doesn’t make a difference to the wetlands.

R. Metcalf states that buffers are important to the wetlands. He notes that [the impact fee] is assessed based on land value and [including the buffers in that] doesn’t mean that the wetland impact fee [will stay in] Kennebunk.

E. Trainer wonders if [the decision is to either] include the buffers or not, or if there [was a decision that was] “in the middle.”

R. Metcalf states that for the amount of wetland as far as the impact is concerned, he has an issue with putting impacts on the buffer area. He notes that [the Town] is not looking to do a major wetland impact, as [the Town] has never done a large-scale wetland impact, [as] otherwise it “goes under” federal or State jurisdiction. He notes that [the Board] has always “pushed back.” He notes that the wetland mitigation has been “spearheaded” for the last 15-years by the small wetland fill [the Board] has approved. He notes that a lot of the wetland fills that [the Board] has done, get recorded by the State and [the State] doesn’t regulate those small wetland impacts. He notes that [the Board] is trying to keep the amount of impact down.

E. Trainer states that he welcomes other thoughts so he can “understand this.” He notes that when [the Board] is talking about wetlands in general, they are looking at the revisions and proposing revisions to the ordinance. He wonders if [the Board] should be looking at that principle or not.

J. Vance wonders how much the [impact fee amount] actually comes to using the numbers that were provided. She states that she thinks about what [R. Smith said at a previous meeting] concerning the “cost of doing business” and if an applicant has to choose to pay a fee [instead of avoiding the wetland fill].

J. Shack states that for every square foot is \$4.48, so it would be \$4,500 per 1,000-square feet. She notes that it [the Conservation Commission] wants to make sure whatever [price] they decide on doesn’t end up being [so cheap that the applicant] can just pay “a few bucks” and do “damn well” what they please. She notes that for the Thomas Muller Road, which is [a wetland fill] of 4,000-square feet, it would [cost] \$18,000. She notes that she doesn’t know if this is a lot for development costs.

R. Metcalf states that it depends on what [the applicant] is building. J. Vance wonders if this would be a deterrent and would make [the applicant] “stop and think twice.” R. Metcalf states that to R. Smith’s [previous point], [the applicant] will still have to go through the same standards to prove that there is no alternate methodology without impacting the wetland. J. Shack adds that [this ordinance] is “step 2” [for an applicant]. R. Smith notes that this is what made [the ordinance] palatable to him, as it isn’t just a fee, [but that the applicant] would have to justify [the wetland fill].

C. MacClinchy states that [the ordinance] is looking at projects that would be less than 20,000-square feet of impact and the question is which [areas] do [the Board members] want to consider part of the impact. He notes that the Conservation Commission is asking the Board to consider the wetland impact and the setback impact [in order to] come up with standards to review. He notes that R. Metcalf has suggested to just [include] the wetland impact. He notes that these are for impacts under a half-acre in size. He notes that these are relatively small. He states that the question is how [the Town should] address all impacts. He states that he knows how important buffer areas are [and that] he thinks that for some projects it becomes “a little too much” to consider [the buffers] in these impacts when [some of these applications will be looking at]

crossings for home lots “and such.” He notes that this could be doubling the impact by adding the setback areas that are impacted as well. He states that while [the Board] is concerned and wants to protect the buffers, including a specified impact might be a “little more than we need to do at this point.”

R. Smith states that the “other piece” is that [the Board] needs to get the ordinance passed. He states that the [voters] are going to argue. He states that the more burdens “thrown” on [the public], the harder they will fight it. He notes that it is important to protect wetlands as much as they can, [but that at this point] they have to “give a little” to not lose the entire project.

J. Shack states that [the Conservation Commission] wants to do something that is feasible and not extremist. She notes that she has a question that relates to the idea [presented] by R. Metcalf about the access roads. She notes that there [were some applications] that “pushed the envelope” to put a house in a certain spot. She gives the example of Lobster Lane.

J. Stoll states that the issue with “that one” was that the isolated forest wetland wasn’t connected and that is why it didn’t work.

J. Shack wonders if [an applicant] isn’t impacting wetlands, should [this formula] be part of the calculation at all.

R. Metcalf states that it should be included in the impact fee. He notes that when [the Board] looks at these, they look closely and make [the applicant] go with the steepest grade possible to have the minimum amount of impact. He notes that the “one thing” [the Board] never [accepted was] filling a wetland to put a building in a location. He states that [the Board] has modified footprints. He notes that [the Board] takes it seriously, [but that] sometimes [the Board] has to be flexible. He states that the threshold for tier one is 14,999 [square feet] and it “triggers” to tier two at 15,000-square feet, [which is when] the State “gets involved.”

D. Smith wonders what the dollar impact is if [an applicant] is trying to cross a 4,000-square foot wetland impact.

J. Shack states that she wants to make a comment. She notes that R. Metcalf has been talking about not doing “XYZ because [the Board] has been good at protecting wetlands. She notes that one of the [Conservation Commission’s] goals is to set something in place for future Board use, [especially if the Board is] not “as good” [at protecting wetlands].

R. Metcalf states that it is a matter of getting language “in here” so that future boards have the precedent of evaluating the wetlands that come before the Board.

D. Smith states that he wants to back-track to [figure out] what the 4,000-square feet [impact fee would be]. He notes that it is \$4,500 per 1,000 [square feet], which is \$18,000. He notes that the next question is if that is a lot of money and if it would apply to someone who is trying to do a wetland crossing for a subdivision to an upland. He wonders if this is something that would be [an issue] for a developer and if \$18,000 is a lot of money [to a developer].

J. Shack states that the fee is also set up so it should be more expensive than a restoration or enhancement project. She notes that if a developer is doing an enhancement project, the fee is more expensive than to do the enhancement or restoration project.

D. Smith wonders what the enhancement project refers to. C. MacClinchy explains [that the enhancement project is] work the developer does on their own to rectify the situation. R. Metcalf adds that [this enhancement include] restoration on their property or another property.

G. Cain states that there is a place in [the ordinance] where the applicant can choose to do mitigation [that is] part fee and part enhancement. She notes that the towns that [the Conservation Commission has interviewed] has never had to use [this part of the ordinance, but that] it might relate to the buffer concern.

J. Shack states that the State allows for projects that preserve adjacent uplands. D. Smith asks if [these uplands would theoretically be] put in a conservation easement "or something." J. Shack states, "yes."

R. Metcalf notes that [the ordinance] is looking at restoring wetland impacts. He states that DEP has a formula [that could be used]. J. Shack notes that this [DEP formula] is what [is already in use]. She notes that [the formula] is under Compensation Project, Plan C.

R. Metcalf notes that if [the Town] pays the State money, "you don't know where it will go." He states that [the ordinance needs to state] that [the money will be used within] the Town. J. Shack states that this is "in there too." C. MacClinchy notes that [it is] in part D.

J. Shack notes that for wetlands of special significance, "everything is doubled," which is part of the State calculations.

R. Metcalf states [within] the Compensation Project plan [that does not] require an access road for a single lot, he wonders if [the Conservation Commission is suggesting] a number if they are saying that [the applicant would have to] impact [a certain amount] of wetland.

C. MacClinchy states that J. Stoll's comment is that he included this section in at [the Board's] request. J. Stoll states that [the initials in the draft of the ordinance that are] JES [stand for] J. Shack [and not J. Stoll].

J. Shack notes that she can rewrite [this section] so that it is clear. She asks R. Metcalf about including mitigation banking under 3B.

R. Metcalf states that this goes to "back to something" the Town discussed [previously]. He states that Gorham is a "classic example" where [the Town] can increase density to pay "X number of dollars." He states that [Gorham] has identified a parcel in the community to acquire for open space. He states that [the Town of Kennebunk] gave away land to Rachel Carson [Wildlife Preserve] and it is not a mitigation bank.

J. Shack wonders if this is something that needs to be in [the ordinance].

R. Metcalf states that this [ordinance] needs to [be passed and can be] tweaked after. He notes that [adding in mitigation banking] would be a step after [the ordinance is passed].

R. Metcalf states that he has another question. He wonders about the maintenance for the restoration enhancement. He states that he would not put "maybe" [but instead that] it should be required. He states that with DEP and wetland impacts and mitigation on site, [the applicant] has to do a report every 5-years to make sure it is approved.

J. Shack states that she has a comment about what Maine DEP requires for the annual report. J. Vance wonders how the monitoring is executed [from the Maine DEP]. She wonders if there is a tickler file for annual reports and what [happens if an applicant] doesn't review.

J. Stoll states that he doesn't monitor "any of this." He notes that he doesn't think there is a clear path [but that the information is] somewhere with the Community Development Department.

R. Metcalf states that [the Town] had a "couple of" performance guarantee lapses. He notes that there was no tracking mechanism "at the time." He states that there is software [that can help this so that the information] doesn't "fall through the cracks." J. Stoll states that they are looking into this.

R. Metcalf states that the performance guarantee has to go to the Town Manager, not the Town Planner. J. Shack wonders if it would be the total cost. R. Metcalf states, "yes." C. MacClinchy wonders if [it is based on] contingency fee. R. Metcalf states that it is based on a percentage of the project. J. Stoll states that it is [1]25%. J. Shack notes that [the ordinance] should read [that it is] 25% of the Compensation Plan

R. Metcalf suggests [adding to the ordinance] an inspection process to make sure [the enhancement projects] are installed properly. He notes that this should be the [job of the Town Planner or Code Office], but for someone with expertise to peer review. J. Shack states that this would be an inspection process. R. Metcalf adds that [it would be for] installation according to the plan.

J. Vance wonders if [the Conservation Commission] knows how other towns have handled private non-profit organizations dedicated to administering the mitigation. J. Shack states that she doesn't know about the wetlands but for the vernal pool program, [other towns] use Land Trusts and the State uses the Nature Conservancy.

R. Metcalf states that [the Town] has done something "similar" instead of having [the applicant] go through the site location, [with the Town's] open space [the applicant] has been able to dedicate a section of the lot so that the State holds part of the rights to it so it is preserved. He notes that the applicant doesn't have to go through the Planning Board and site location. He assumes that the Town Attorney will be looking at this [ordinance] too. He states that he has another question. He notes that when looking at the impact fees, [the Town] can only hold them for a certain period of time [or] the money goes back to whoever put these fees in place. He states that [they need to make sure that these fees] don't get turned around or "kicked back," [but instead] that the funds

[are used] to do “some good.”

J. Stoll states that he will follow-up with the Town Attorney. He notes that he thinks there is a little “extra work” as Staff and the Conservation Commission [that needs to be done] and that [these entities] will look to return with a revision “in a month or two.” He states that now [the Board] has given the “go ahead,” he will “roll this” into a shoreland chapter.

R. Smith wonders if it will be its own format. J. Stoll states, “yes” [and that he can give the Board] a legal [copy] and a black and white [copy].

R. Metcalf wonders if [the ordinance can be on the June 2020 ballot, what the project time frame is].

J. Stoll states that in January or February [the ordinance] would have to go to a public hearing.

J. Vance states that she is impressed with how far it has come and that it is a “really good” piece of work.

C. MacClinchy states that in an effort to not have to reargue some points, he wonders if [the Board] wants to focus on the impacts on the wetland areas and the setback areas. He states that if the Board is uncomfortable [with making a decision on this now then it can be discussed at a later date]. He wonders if the Board thinks they are ready to make a decision. He asks who is in favor of calculating the impacts to the wetlands and not the setback areas, and who would support an ordinance with just impacts to the wetlands.

C. MacClinchy, R. Metcalf, and D. Smith vote in favor of this proposition.

R. Smith states that he would be in favor of supporting both the uplands and the wetlands because [the ordinance] can always be “dialed back” after the public hearing. He notes that he doesn’t think the amount of money added to the projects will be that severe to deter anyone from developing, [but instead] will make [these applicants] look harder for an alternative way of [working with the wetlands].

C. MacClinchy states that there are three choices: calculating the impacts for the sake of this ordinance to include both the wetland and the setback areas; choosing [to calculate] just the impact to the wetland; [or remaining] unsure.

E. Trainer states that he is inclined to say similar reasons to what R. Smith said. He notes that [this issue] will come out in a public hearing. He states that what [the Board and Conservation Commission] is “doing here” is looking to protect the wetlands.

R. Metcalf states that [he is in favor of just calculating the wetlands].

D. Smith states that he can look at it two different ways. He notes that [it could be] used as a negotiating tool to see if [the Board] can do what the Conservation Commission wants. He notes that he is not sure how enhancement “plays into this” as long as this option is available. He states that he would [be in favor of just calculating] the wetlands to start with.

J. Vance states that it is certainly “clean” to count the wetland impact. She notes that she was trying to “go back in my mind” to [projects the Board] has looked at in cases [where there were] impacts to a buffer that she wished wasn’t happening because [it could have] degraded the wetlands. She notes that she likes the idea of using this as a negotiating tool. She states that every single [wetland the Board] has ever looked at has been different. She notes that she sees a difference between a priority 3 [wetland] and a priority 2 [wetland]. She suggests having a more stringent requirement on a priority 1 and 2 [wetland] and not on a priority 3 would be a “happy medium.” She notes that she would like to “look at it more” and look at the projects [the Board] has approved and if there are “things” in hindsight [should have been protected].

C. MacClinchy states that [the Board] is not ready to determine “that part” [of the ordinance] and will “rehash it again.” He notes that [the Board] is not any closer to determining the Compensation Exception [as they did not] “talk about that stuff yet.”

J. Stoll states that they will come back with the 3-year information [that had been requested].

B. Code Enforcement Opinion and Legal Response

C. MacClinchy states that the next item [on the agenda] is a Code Enforcement opinion. He notes that [the Board] asked J. Stoll to follow-up on a few questions and responses.

J. Stoll states that [this discussion] is based on an application [the Board had received]. He notes that he provided [the Code Enforcement Officer’s] full responses on how he made the determination [to remove the application from the Board’s jurisdiction]. J. Stoll reads his summary he sent to the Town Attorney, “there was a determination made in accordance with Article 3, section 3, 3A of the zoning ordinance: when an impact is proposed to a priority 3 wetland that is less than 1-acre in size, the Town does not have jurisdiction, and this resulted in a recent Planning Board application being withdrawn.” He notes that the Town Attorney came back with the response, “that while this is the Code Officer’s determination to make, I agree with his determination that a wetland under 1-acre is not subject to regulation of the shoreland overlay district provisions. Article 3, section 3B establishes that the shoreland zone applies to lands within 25-feet of the normal high-water line of a wetland, other than a priority 1 or 2 wetland that is 1 or more acres in size.” He notes that he also provided [the Board] with the sheet from article 3 where this [response and determination] was primarily based.

R. Metcalf states that there are wetlands that can be filled without [the Board’s] jurisdiction. He notes that if this isn’t regulated now, [then the Board can’t] ensure that [these wetland fills] can comply with the wetland mitigation ordinance.

C. MacClinchy wonders if this is the only place that “lays out” what wetland [the Board] can review. He wonders if there is language that says any impact to a wetland must be reviewed by the Planning Board. J. Stoll states [this is found in] article 10 and is “just reviewed” under the establishment of districts. He notes that [the Board] could be referencing article 10C10. C. MacClinchy wonders if in those sections it talks size of wetlands. J. Stoll states that it does not.

R. Metcalf states that it raises the question that [the Board] has reviewed and improved wetland crossing for driveways that were not an acre or greater. He notes that these wetlands were less than an acre. He states that when it is difficult for an applicant to determine the size of the wetland as it is off-site, then [the Code Enforcement Officer finds that] it would go to the Board for review. He notes that for “this case” the applicant’s surveyor determined that the wetland did not exceed an acre in size and that [the Code Enforcement Officer found that the applicant] had a right to fill [this wetland].

J. Stoll states that he would recommend that this be addressed in the shoreland zoning chapter going forward.

R. Metcalf wonders what is section 3G and if that is referencing the one-acre or greater [determination]. J. Stoll states that these are performance standards. R. Metcalf wonders if it references the size of the wetland. J. Stoll states, “no.”

R. Metcalf wonders if there is “any teeth to this standard.” He wonders if this provision would not therefore require any filling without going before the Planning Board. J. Stoll states that this is a legitimate question. R. Metcalf states that [the Board] needs an answer.

C. MacClinchy states that J. Stoll referenced the boundaries in the shoreland overlay district [to the Town Attorney]. J. Stoll states that this was based on the determination of why Orrin’s Way [application] was withdrawn.

C. MacClinchy states that the performance standard references the shoreland overlay and surge protection. He notes that this is the standards for the shoreland zoning. He states that article 2 defines the boundaries of the shoreland zone but article 10 shows the review standards. He states that there is an inconsistency with the two.

R. Metcalf states that the performance standards are based on the shoreland zoning so it doesn’t apply but it needs to be clarified. J. Stoll states that he can get clarity [on this issue].

C. MacClinchy states that [the Code Enforcement Officer] makes the point that [the Board regulates wetlands more than other Towns] and that the shoreland zoning model has weakened over time. He wonders [if the Board] is saying that all wetland impacts should be reviewed, not just those an acre in size.

R. Metcalf wonders if [the Conservation Commission] looked at South Portland and Kittery and if they regulate all wetlands. J. Shack states that she can find out but she doesn’t remember.

R. Smith wonders if [the Code Enforcement Officer] is saying that there should be no review of wetland filling. C. MacClinchy states that [the Code Enforcement Officer is saying that there should be no review of wetland filling] for a priority 3 [wetland that is] under one acre in size and is not regulated by the Town in [the Code Enforcement Officer’s] determination.

R. Metcalf states that the only way [these wetland fills] “wind up” being reviewed by [the Board] is if they “trigger” the DEP requirements. J. Stoll states that he thinks [the Code Enforcement

Officer] makes “mention” of that” in here.” He states that [the Code Enforcement Officer] wanted to come and discuss this further but he is out-of-town.

C. MacClinchy asks J. Stoll to follow-up with [the Town Attorney] for further review of the performance standards. He notes that [the Board] has no idea where they need to address as they review the wetland mitigation plan.

C. MacClinchy begins discussing J. Stoll’s “second question” [regarding] subdivision regulations.

J. Stoll states that [the Town] had two proposals with minor subdivisions where the applicant has proposed access to two or more lots off of a 30-foot wide easement. He states that a legal opinion was requested and that it is his assumption that based on article 11.1.1 of the subdivision regulations, which then references the street design and construction standards, that those standards require that all streets be constructed within a 50-foot right-of-way. He states that [the Town Attorney’s response was that she], “agrees with the Board member’s opinion that a 50-foot wide right-of-way is required. As you know, section 11.1.1 of the subdivision standards states that the proposed streets in any subdivision plan must be designed to be constructed in accordance with all State and local ordinances, as well as the specifications contained in the Kennebunk street design and construction standards ordinance. That ordinance states in table 8 that the minimum right-of-way width for all roads other than arterial, commercial, or industrial, is 50-feet....[there is a minimum right-of-way width of 60-feet. The 50-foot requirement increases to 60-feet if 6 or more feet of cut and fill is required to meet the road standards.” J. Stoll notes that the two recent [applications] that have “come in” both have been notified that the 30-foot wide easement would not satisfy that requirement so they must expand to 50-feet [in order to] access [the lot].

R. Smith states that it is one lot not road.

R. Metcalf notes that [the applicant] needs to deduct “that from there” [their net lot area calculations].

III. Other/Information

C. MacClinchy states that while on [the topic of subdivisions], he wonders if the one “off Alfred Road” for a tentative site walk ever get dates for a potential workshop.

J. Stoll states that the 16th [of September, 2019] was brought up. C. MacClinchy confirms [this workshop could be held on this day at] 7PM.

C. MacClinchy wonders if there are notice requirements for Planning Board workshops. J. Stoll states that he just needs to post it with a reasonable amount of time.

IV. Approval of Meeting Minutes

A. August 12, 2019 Meeting Minutes

C. MacClinchy begins to review the meeting minutes from August 12th, 2019

D. Smith moves that the Town of Kennebunk Planning Board approve the Town of Kennebunk Planning Board's meeting minutes for Monday, August 12th, 2019, as corrected.

C. MacClinchy notes that R. Metcalf and R. Smith were absent from the [August 12th, 2019 meeting] and so E. Trainer can vote.

All are in favor, none opposed.

The motion passes 4/0.

B. August 26, 2019 Meeting Minutes

C. MacClinchy begins to review the meeting minutes from August 26th, [2019].

D. Smith moves that the Town of Kennebunk Planning Board approve the Town of Kennebunk meeting minutes for Monday, August 26th, 2019, as corrected.

R. Smith seconds the motion.

All are in favor, none opposed.

The motion passes 5/0.

V. Adjournment

D. Smith moves to adjourn.

R. Smith seconds the motion.

The vote was 5/0 in favor of the motion.

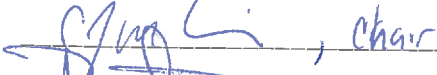
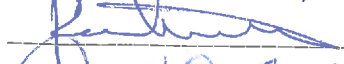
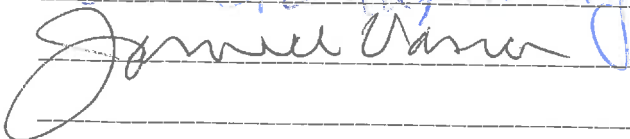
Meeting adjourned at approximately 9:06 pm.

Respectfully submitted by Megan Hall.

Town of Kennebunk Planning Board
Meeting Minutes for September 9th, 2019

Page 15 of 15

Signature Page:

 , Chair	10/7/19
	10/7/19
David C. Smith, Secretary	10/7/19
	10/15/19

Signature Date: