St. George Planning Board Meeting 7PM at Town Office and via Zoom January 10, 2023 Minutes

The Planning Board meeting was called to order at 7:00pm. Planning Board Members present were Chair Anne Cox, Anne Cogger, Richard Moskowitz, Michael B. Jordan, and Jane Brown. Also present were CEO Terry Brackett, Richard Bates, Justin Long and William Gartley.

were CEO Terry Brackett, Richard Bates, Justin Long and William Gartley.
Present via Zoom was Loreen Meyer.
Quorum:
A quorum was present.
Conflict of Interest:
There were no conflicts of interest.
Adjustments to Agenda:
There were no adjustments to the agenda.
Review of the Minutes:
Cogger moved to approve the December 10, 2022 Planning Board Meeting Minutes as corrected,

seconded by Moskowitz, and by unanimous vote, the minutes were approved.

Public Comments:

Building Permits:

Lamb Stratton Trust – Shoreline Stabilization and Underground Power, 237 Long Cove Rd., Map 225, Lot 065

William Gartley

I'm here today representing Dayne Lamb and Dr. Stratton on 237 Long Cove Road. They have a section of a driveway that been threatened by some erosion. They have a small section that they would like to rip rap. It's a little over 40 feet in total length and I think the maximum height is about seven feet. Almost half of it is on land that's owned by the Road Association, and they have a letter from the Road Association giving them permission to fix it at the same time. It is right to the edge of the road. In one of the photos that is included, I think it's labeled picture five. You can see the tire tracks at the edge of the slope in that snowy picture taken just about a year ago. It is from the ledge to the lower bottom corner of that photo. It's just a small little section. The other thing they're doing is, if you look at the plan that we submitted, there's an overhead powerline that stretches over that section of rip rap and through some woods, and it's pretty heavily wooded there. There's been many times where during storms some of those spruce trees have taken that power line out, so rather than keep going through that, they're going to put that underground in their driveway. (Inaudible)

Jordan

(Inaudible)

William Gartley

That's the extent of what they're proposing. We do have permits from the DEP and the Army Corps.

Chair Cox

It's a very narrow strip, I can see. Will some vegetation be removed?

William Gartley

It has all fallen. There's not much there. You can see in that photo that I gave you, there's a couple of stumps from some trees that have fallen down. In photo five, that is the extent of it basically from the ledge in the foreground of that photo down to the bottom part of the photo where there's a stump. I think picture three is a good one also. It kind of shows there's nothing left there.

Cogger

This is a mud flat, isn't it? Is this at low tide?

William Gartley

Yes, pictures one and two were taken there at low tide, so it totally drains out.

If you look at the plan, you can see where the highest annual tide comes in just a few feet from the driveway.

William Gartley

As the land goes away, the tide just gets closer and closer.

Jordan

The DEP permit states that one tree was going to be removed.

William Gartley

I think that was for the power line. No, you are right. There is one twelve-inch spruce right at the very right side, if you look at the plan. There was one spruce down at the HAT.

Chair Cox

So that will be removed and then also the DEP permit mentions replanting with native vegetation. Where are you going to be replanting?

William Gartley

There really isn't much space there. There is that one tree, but it has already been undermined and it is right at the HAT. Then above that, there's very little disturbance. It really is just the eroded part of the slope that's being touched. We're very close to the driveway there. Laura Hill owns the property on the other side so the driveway really can't be pushed away. Also, on the other side of the driveway, it's a steep ledge outcropping there.

Chair Cox

I've driven there. I felt like I've taken my life into my hands turning around.

William Gartley

I stopped. I stayed out on Long Cove Rd. I wasn't going in there.

Chair Cox

I was delivering mulch. Any questions on this?

Jordan

On the plan, where is the house?

William Gartley

If you kept going south down the driveway, it is off the plan to the left.

Not too far. There is a new transformer that is going to be located there. How far away is the house?

William Gartley

Probably another 75 feet.

Chair Cox

They have a little cottage.

William Gartley

They came before this board in order to do the work they did on the house. It is on a peninsula, and it's set back all the way and there is a very small area to work in.

Chair Cox

Any questions? Is this a complete application? The only thing I see missing is a plan for the revegetation, but your explanation makes total sense but there is nothing to revegetate.

Jordan

There is one tree. The ordinance states we are supposed to require a tree for tree revegetation.

Chair Cox

It doesn't have to be planted in the exact same spot. It can be planted in the vicinity.

Jordan

The other vegetation referenced by the DEP does not refer to replacing anything that's actually there now.

William Gartley

No. I did show on the plan an area above the rock that's likely to get disturbed and there is a little area at the top of that slope that we know is going to get disturbed.

Jordan

Kind of light green?

William Gartley

Yes. We did call that area out to be revegetate it above the stone.

Jordan

Are you going to put something in?

William Gartley

Yes. Something low growing with a good root system. The spruce tree, I guess could go somewhere else. The rest of the property is pretty heavily wooded. There are a lot of trees there. That spruce tree is on the Long Cove Road Association. There is a culvert that outlets right behind that, which is also part of the reason that tree is doing great.

Chair Cox

I think we will have to direct them to the ordinance and have them plant a spruce in the close proximity, in a reasonable place.

William Gartley

Doesn't the Shoreland Zone Ordinance point system allow some removal.

Jordan

We should look at 15S4

Terry Brackett

It doesn't look like they would need the point system for what is there.

William Gartley

When you look at photo two, we haven't located every last tree that's in the area.

Terry Brackett

(inaudible) on the other side of the road to keep trees (inaudible).

William Gartley

On Long Cove Rd.?

Terry Brackett

No, on the other property over there.

Chair Cox

I bet they could find someplace.

William Gartley

Yes. I'm sure they'd be fine with that.

Jordan

The requirement is in 15S4. 15S is about revegetation and states that all trees and saplings removed must be replaced with native noninvasive species.

It also states in section E if revegetation is required for a shoreline stabilization project and it is not possible to plant trees and saplings in the same area where they were removed, then trees or saplings must be planted in a location that effectively reestablishes the screening between the shoreline and the structures. So that's really the intention of that. Let's go back to where we were. Is this complete? Do we have enough information because we could make a condition for that.

On a motion by Jordan, seconded by Brown, the Planning Board found by a unanimous vote, the application was complete.

Chair Cox

The only thing I see is the DEP has done an exhaustive study. We have approval from them. We have approval from the Army Corps. The only question is vegetation.

Jordan

There's nothing for us to decide here except vegetation. We don't have a lot to deal with, the riprap and the size of the folders and everything else.

Chair Cox

Clearly, they are not going to come in on a barge with this. They are not going to be disturbing soil because they're coming off the driveway. There's no soil disturbance going on that way. It states in 15C10, vegetation may be removed to conduct shoreline stabilization provided the Planning Board gives approval and then revegetation must occur in accordance with what we just read. It seems like they have said that in the disturbed area, they will revegetate with low growing native materials. It's a very narrow strip. I believe we could, based on what we just read, the requirement that a spruce tree be planted somewhere on the property.

Jordan

Somewhere close by which makes it look similar.

William Gartley

Should it be on that Long Cove Association property?

Chair Cox

I think so. Part of the intention of it is the screening and especially with the power line going away and moved up the hill, I bet there would be a place right in there.

Jordan

The same area from where the removed tree is now.

Are you all good with approving it based on that?

On a motion by Cogger, seconded by Brown, the Board unanimously approved the application on the basis that the spruce tree vegetation will be replaced by the applicant in a way that satisfies section 15S of the Shoreland Zoning Ordinance.

Mr. Long and Mr. Gartley's review of the zoning change for Jones Brook Subdivision

Ken Oelberger gave a slide presentation of the US data maps and Habitat data maps, to clarify the wetland buffer area.

Ken Oelberger

The first thing I'll do is bring up the organized parcels so we can make sure we are looking at the right place. This is the parcel that I'm outlining here. It comes from the US data beginning with Habitat data. This shows the wetland buffer area in yellow. This is the USGS hydrographic data set. This one shows the stream running all the way down and they classify it as a stream in the USGS data set. The wetland fill from the beginning with Habitat shows the wetlands, all the way down right to Route 73 and is classified as a wetland from that perspective.

William Gartley

I don't disagree with any of that but that stream still doesn't meet the definition of a stream in the Shoreland Zoning Ordinance because the zoning ordinance says it's the confluence of two of those.

Chair Cox

Here's the strange thing. At some point somebody must have decided it could be a mistake because we have the two streams and then the resource protection area. The stream doesn't disappear. It obviously came all the way through here.

Justin Long

What is the setback off of a stream?

Chair Cox

It is 75 feet, except for in this case, because it's adjacent to the resource protection area, it takes the resource protection designation.

William Gartley

If it's stream protection, but it doesn't meet the definition of stream protection. That's the problem.

I'm not convinced that a mistake was made when this stream was put into stream protection. That also shows a channel coming in.

William Gartley

What it really comes down to is the definitions in the ordinance, right?

Chair Cox

I agree. It says what it says.

William Gartley

I've sent all of this information to Colin Clark, the Shoreland Zoning Coordinator for the DEP and he said if the town made the change that we have requested, he would sign it instantly because he agrees that this is not a stream under the definition. It doesn't meet stream protection.

Chair Cox

Did he know that we had this?

William Gartley

He has your map because he has to approve it. When I was talking to him on the phone, he had the Shoreland Zoning Map in front of him, he had your current shoreland zoning and he had the one that you're working on. He was comparing all three. There are a lot of streams in St. George that are not stream protection. They're NRPA streams, but they're not stream protection. There are even tributary streams that are not stream protection and on tributaries you can't build at all. Unfortunately, there's a lot of different definitions for stream but for shoreland zoning, it is pretty clear.

Jordan

I don't know this because I haven't been around this very long. Is the definition of stream in the Shoreland Zoning Ordinance the same now as it was at the time when the zoning map was made?

William Gartley

Yes, that hasn't changed in a long, long time. I can tell you that there's a lot of towns that have made this mistake. The town of Northport has taken every stream and made it stream protection and didn't even realize they made the mistake until we pointed it out not too long ago and so they're in the process of potentially changing it. It is complicated, because there's a lot of different definitions of stream but under the shoreland zoning, the definition is not that complicated.

Jordan

I guess my problem is that the people who drew the map, wherever the map was drawn, were looking at the same definition that we're looking at now and they decided that it was a stream. Now you say that

was a mistake, and they didn't have a reason to do it. The law has a certain thing called a presumption of regularity, which means that official actions that have been taken are presumed to be regular in accordance with law, unless somebody can prove they're not. I don't really know what it takes to prove that it was wrong in the first place.

William Gartley

There's plenty of other streams that are exactly like Jones Brook that aren't stream protection, that have wetlands adjacent to them.

Cogger

Then why is this one protected?

William Gartley

That's a good question, I think.

Justin Long

I think you'll find that it wasn't resource protection from the stream, it was resource protection to meet the state waterfowl (inaudible).

Chair Cox

If we take it out of resource protection because of the change that has happened, my thinking is that it should go back into stream protection because we have stream protection at the head of it and stream protection at the end of it. Potentially this went into place because it is feeding into Long Cove and that even though our Comprehensive Plan does not call it out as an area for protection, we do have some documents that refer to it as an area of ecological importance. That could be why it was put in, to give maximum protection to this sort of whole water system. We have a significant ecological area listing: Town of St. George, Jones Brook, Long Cove and adjacent islands. Now it doesn't have the weight of being codified in the Comprehensive Plan, but it is in the Conservation Commission notes in 2015.

William Gartley

But it doesn't show up anywhere in the Shoreland Zone under these definitions. There's no mention of any of that so you're just kind of adding stuff because it feels good.

Chair Cox

No, I think that may have been the idea when this was initially done, that we need to give it maximum protection and the stream protection crossing Kinny Woods Road. We might need to relook at all of our Shoreland Zoning definitions, not just piecemeal.

Jordan

I don't know what's up there.

William Gartley

It doesn't really matter.

Jordan

It matters if there are two tributaries leading to it.

William Gartley

They show up on the USGS map.

Ken Oelberger

How far north do you have to go back up the stream to find a tributary?

Chair Cox

It just has to show up on the map.

William Gartley

Yes. You never get to a point where there are two.

Ken Oelberger

What about the US Fish and Wildlife piece that has different categories of wetland for this map which is the US map, and it shows that it goes right down to Route 73 so it's considered a wetland.

William Gartley

It is, but that doesn't make it Resource Protection or Stream Protection. It just makes it a wetland.

Ken Oelberger

But if it's a continuous wetland, it fits the category of a continuous wetland.

William Gartley

It is continuous wetland and therefore it's shoreland zoning.

Ken Oelberger

But it's resource protection.

Chair Cox

No. But it would be shoreland zoning.

William Gartley

Otherwise, if that wetland wasn't there, it wouldn't even be shoreland zoning. It's the fact that that wetland connects to that larger wetland that makes this portion of stream even fall under shoreland zoning. Not all streams fall under shoreland zoning.

Chair Cox

It doesn't show the scale on it. It is the confluence of two perennial streams, as depicted on the most recent high resolution version of the natural height hydrograph data set available from USGS, on the website of the USGS survey. That's a pretty small scale.

William Gartley

You can zoom in. The resolution kind of goes away a little bit but you can definitely zoom in.

Chair Cox

Is there a larger one? I'm trying to figure out why we have this stream designation here, but you think it makes sense.

William Gartley

To be honest, when I first started looking at this, it was as simple as the IFW has changed the wading waterfowl habitat, which is clearly what created the resource protection to begin with. And so, it was as simple as saying okay, that was changed in 2008. The town should update their map to match. It wasn't even thinking that this would try to be called stream protection.

Jordan

If you wanted it rezoned as marine residential water, which is what you wanted, that could not be done if it was in fact stream protection.

William Gartley

I didn't think and still don't believe that it meets the requirements of stream protection in the ordinance. I didn't look very closely at the fact that there were other places that likely don't meet this definition either. There may be others in the town. I didn't look.

Chair Cox

This is the first time since I've been here that we have been dealing with anything in stream protection.

William Gartley

The other thing is that it's not like this is going to result in a massive change to the area. I mean, there's still a 75-foot setback; there's still a wetland there that we're not going to get into. The resource protection created a 250-foot "no-build, don't touch zone", and Justin only needs about 75 feet off that road to be able to utilize this and there will still be another 100-150 feet down to the stream.

Justin Long

It is not cost effective to go down over that hill. It is not like some rich guy is going to build a house at 75-foot one inch. The way that land changes, it is not cost effective to go down over that hill. There's a couple of flat spots up close to the road and that's all that's all we're after.

William Gartley

Not that that really should matter. It is the ordinance that should matter but the reality is at this location, there's a road there and they just want to build up near that road. It is still going to leave probably 150 feet or more of a wooded buffer

Terry Brackett

In town, we have an area that is in the Shoreland Zone which is half resource protection and then it goes into Marine Residential. It is off Adric Ln.

Chair Cox

Because of the steep bluff there.

William Gartley

That slopes probably more than twenty percent.

Chair Cox

I think you are right.

Justin Long

The slope on that property is not a problem. It is steep. It is not cost effective to go down over that hill and if you're trying to build affordable housing, rental properties, to people that work here to live in, you can't spend a nickel more than you have to.

Jordan

What is the area of the lot which will be affected by that?

Chair Cox

4 4 acres

Jordan

What would you be expecting to do with this plot?

William Gartley

He was just looking to be able to put something similar to these right on the road here.

Jordan

One single family?

Justin Long

I don't think so. I'm clearly pushing for two-unit houses on each one of those lots. I mean one two-unit house to be clear. We want to try to put 14 units in there total if we can. If we can take those five lots and make that lot into three, that will give us seven lots right there.

Chair Cox

You want to make lot nine into three lots?

Justin Long

Correct.

Jordan

Further subdivided?

Chair Cox

Further subdivided into three lots.

Justin Long

It doesn't matter to me. I don't have to subdivide or pay the guys to stake it out as long as you guys let me put three buildings on that lot.

Jordan

We will have to see what happens with this legislation.

Justin Long

Nobody wants anybody moving into town here because they don't want it to change.

Chair Cox

We're waiting to hear what the state is doing with this new legislation to be able to adjust.

Terry Brackett

That is not going to affect that because you have to reside on the property for that additional unit, I believe. You could put three buildings on that if you own those.

Justin Long

There are buildable spots on that lot close to that road. There are building envelopes.

Jordan

Three dwelling units wouldn't work under our existing ordinances, but we will have to see what the state does. I think they're going to liberalize it.

Justin Long

In your subdivision rules, is there something that addresses cluster housing?

Terry Brackett

Yes, there is.

Justin Long

If I tuck away say eight acres somewhere else, or seven acres, can we put seven buildings on seven acres?

Terry Brackett

I'd have to reread it because I don't look at it that often.

Jordan

In this particular situation, under the current law, to build three units, you need five acres and you only have four plus.

Chair Cox

If you subdivided it into acre lots, then each lot can have a house.

Justin Long

What if we did away with the whole subdivision and just counted the land that's there.

Chair Cox

That's another discussion.

Justin Long

All I'm trying to do is solve a problem that this town has and it's a serious one. Nobody has a place to live, my kids, everybody's kids.

Jordan

Assuming we were agreeable that the existing designation of parts of Jones Brook as stream protection is erroneous and you would like us to change that, the Planning Board doesn't actually have a role. We would have to take it to a vote. How do we do that? I have no experience in that at all.

Terry Brackett

We have the Chairman of the Select Board here.

Richard Bates

I would be happy to talk to the town attorney about that.

William Gartley

Then if the town did vote to change the designation, then it would have to go to the DEP for approval?

Chair Cox

Right, and just to be clear, what you're asking for is to change that lot nine where it is no longer designated as fisheries, wading, waterfowl, etc., and to change that part of the lot to Marine Residential?

William Gartley

Correct. I mean, I would think it would apply to the other side of the brook. I don't know who owns that parcel.

Chair Cox

To where? Well, we don't have to, but if it doesn't meet the definition, it doesn't seem right to arbitrarily do it for one side and not the other. I don't know who owns that lot.

Justin Long

I doubt anybody's ever going to build anything over there anyway, because that wetland makes right up to the backside of Jerry Hall's property.

William Gartley

It becomes kind of arbitrary. That's all.

Jordan

If we do it for the entire length of Jones Brook, it's arbitrary not to do it for every other non-stream stream and we will have to do those two.

William Gartley

I would think you might want to look at the map and make sure it still meets the ordinance.

Chair Cox

What I'm hearing is that we need to really look at all of our shoreland zoning and take our updated maps. I think the Conservation Commission began to ask some questions that you're looking at.

Ken Oelberger

We were looking at whether other areas in town that way have been affected by the change in the IFW maps.

Chair Cox

That is something that we have to put on our agenda to look at.

Bates

Am I clear that this is probably more work than could be accomplished for a vote in May, given that these things sort of have to be settled by mid-March. We have to get the ballots and all of that.

Chair Cox

If with your consultation with the town attorney tomorrow, he thinks this makes sense and the Select Board thinks we should put it on the ballot, then this particular change could possibly happen.

Bates

Rather than trying to solve all the potential issues in town, just dealing with this one of Jones Brook.

Terry Brackett

I'm not sure that we have many more stream protection areas.

Chair Cox

It is not so much stream protection I was thinking of but the IFW.

Ken Oelberger

And the other areas of town that may be affected. The data that we're looking at is fourteen years old; things have changed in that time. We have to look at areas such as Long Cove. You have to be concerned about runoff from any property running into this stream that is running into the Long Cove or other similar situations.

William Gartley

I think what you're talking about would require an entire change to shoreland zoning if you want to start making designations that don't follow the ordinance.

Chair Cox

If our Comprehensive Plan were changed, we could potentially have resource protection based on things that were denoted in the Comprehensive Plan for protection.

William Gartley

It would be changing the Shoreland Zoning Ordinance.

Right. The Shoreland Zoning Ordinance refers to things that are in the Comprehensive Plan. If it is noted in the Comprehensive Plan, then we can do it, but we don't have that right now.

Justin Long

I would like to say one thing and point out one thing in all due transparency. I would say for lot eight, if you move that line down, you can actually put a building here and there's a little bit more room with good soil right there and it's flat. It's way before the hill; this would be a better spot to separate these two. I would say just this whole property, that's what I that's what I would ask for, to change it to Marine Residential.

Chair Cox

We need to see. Can you display the IFW up there on the map?

Justin Long

429 feet. I think that comes in right there. We would still be out of that.

William Gartley

Yes, I think you I think you're right.

Justin Long

Where that envelope is.

Jordan

This this is 250 feet, right?

Justin Long

It is right now.

Jordan

And that's because it's resource protection.

Chair Cox

This area will stay Resource Protection and then the other area will become Marine Residential.

Justin Long

That's all I wanted to clarify.

Jordan

Okay, we will leave it to the town attorney. I'm not sure what it takes to do this. I think somebody needs to draw a map and put it to the voters that way.

William Gartley

Right. I think you need to show the voters what it is today and what you're proposing to change it to.

Jordan

We have part of that now but then there is this other part. This will have to be on you guys to take care of it.

Chair Cox

It would be similar to what is currently here in terms of the distance, because the Shoreland Zone is 250 feet, and for Marine Residential, the setback is different.

Justin Long

For those houses you could just move one a little closer and one a little further back.

William Gartley

It's still Shoreland Zone and then the 75ft setback is an NRPA setback.

William Gartley

It also classifies as a tributary stream, because it's in the Shoreland Zone which is different from an NRPA setback because the tributary setback allows no building. There's no way to get a permit to build in there. If it's not a tributary stream, and it's just an NRPA stream, you can cross it, and you can get permits to be within 75ft. You can even get a permit to be within 25ft.

Chair Cox

Not here.

William Gartley

If you have good reason and the DEP agrees but it's not easy. Depending on which kind you are, the ordinance is different and the NRPA rules are not in your ordinance; those are just the DEP rules. The tributary stream rules are in the Shoreland Zoning Ordinance. A lot of people don't know that tributary streams even exist.

Chair Cox

Richard, is it cleared to talk with the town attorney?

Bates

I will discuss it with Michael Jordan (inaudible).

Chair Cox

I'm trusting he will too.

Jordan

Let me check my busy schedule?

Bates

We will talk in the morning about this Michael and see what we can get. Gartley and Dorsky will help with the maps and we will endeavor to get just this issue before the voters on May 8th, when this issue will be discussed

Chair Cox

I do believe that we need to orchestrate looking at all the areas in town as a separate issue. Let's get the new Land Use Ordinance taken care of.

Justin Long

Am I understanding this correctly? Do you agree with what he's put across here? Is it acceptable? Will this board vote for it?

Jordan

One thing I don't know is what our role is in this. I don't know that we need to vote on it. It's up to the Select Board.

Justin Long

I think the Planning Board has to send it to the Select Board to put it to a vote.

Jordan

The Select Board has to put it to a vote, and I guess they care what the Planning Board thinks.

Chair Cox

Let's talk to the town attorney.

Jordan

Yes, let's talk to the attorney about the right procedure.

Bates

I agree. It has to go to the voters.

Correct. It has to go to the to the voters.

Terry Brackett

Any change of ordinance has to go to the voters.

Jordan

The map should be corrected.

Chair Cox

Yes. We will get the correct map and then we'll figure out how we're going to look at all of these issues townwide.

William Gartley

When you do that, if you have a workshop or something I'd be happy to volunteer some time to help in any way if I can be helpful.

Chair Cox

Thank you for wading through all of this.

William Gartley

It gets pretty convoluted. I did hear that you are working on the ordinances.

Chair Cox

Yes, we are.

Jordan

If you would stop taking up Colin Clark's time, he might actually tell me something about our draft.

Chair Cox

We're combining all of our many ordinances into one land use ordinance.

Chair Cox

Michael had sent out letter about some of the substantive changes are proposing and we could quickly look at those.

Adjourn

On a motion by Brown, seconded by Cogger, the Board decided by a unanimous vote to adjourn the meeting and at 8:14p.m. the meeting was adjourned.

Land Use Ordinance Workshop

The Planning Board conducted a Land Use Ordinance Workshop.

Respectfully submitted,

Tammy Taylor Recording Secretary Town of St. George, Maine