

## Planning Board

Alan Bellows - Chair  
Melinda Browne – Vice Chair  
Michael Tomacelli  
Robert Ham - Alternate  
Andrew Morley, Alternate  
Tim Utley - Alternate



Town of Boothbay Planning Board Meeting  
Wednesday, December 15, 2016

## **MINUTES**

The meeting took place at the YMCA.

1. Call meeting to order: Chairman Alan Bellows called the meeting to order at 6:30PM.
2. Roll call of members: Alan Bellows, Melinda Browne, Michael Tomacelli, Tim Utley, Robbie Ham, CEO Art Dunlap, Sally Daggett, The Town's attorney, and Secretary Sherry Tibbetts

Alan Bellows also introduced Laura Deane and Kevin Ryan from Forest Bell.

Mike Tomacelli made a motion to grant voting privileges to Tim Utley and Robbie Ham for this meeting and Melinda Browne seconded the motion. Vote: 3-0 in favor.

3. Minutes:  
The minutes of the November meeting were reviewed and amended. Melinda Browne made a motion to approve the amended minutes and Tim Utley seconded the motion. Vote: 4-0 in favor. Robbie Ham abstained as he was not at that meeting.

4. New Business:  
Robbie Ham missed the last meeting but has reviewed the minutes and feels he can make an informed decision on this application. Melinda Browne made a motion that Robbie Ham be allowed to vote on this application and Mike Tomacelli seconded the motion. Vote: 4-0 in favor. Robbie Ham did not vote.

Alan Bellows explained that there were no microphones available and that it was hard to hear and invited everyone to move their chairs as close as possible to the board.

Alan Bellows explained the procedure for the evening, The Town's attorney would speak, then the third party reviewers, the applicant, the Water District, the abutters, the public, then the public session would end and the board would do their review.

5. Old Business:
  - **Applicant: Coastal Maine Botanical Gardens** (continuance)  
**Mailing address:** 132 Botanical Gardens Dr., Boothbay, ME 04537  
**Property location:** 132 Botanical Gardens Dr., Boothbay, ME 04537 Tax map/lot R04/109, 24, 23  
**Zone:** General Residential, Shoreland zone  
**Applications Review:** The applicant proposes to construct a Visitor Center and Gift Shop, a new entrance, new visitor and staff parking lots and road improvements to the entrance.

The Town's attorney Sally Dagget started by saying that the criteria that drives this application is 3.6.1 and the other standards of Section 3 and the focus of the review should be there. Not on 1.8 which is mainly for reference. There are some goals and policies that are in conflict with each other. The letters from the applicant and abutters relating to Planning Board authority have been reviewed by the Planning Board and the Board needs to look at all the criteria in 3.6.3.10 and 3.11.

Alan Bellows explained that a lot of information has been received by the board since the last meeting.

**Environmental Report:**

Laura Diemer and Kevin Ryan from FB Environmental reviewed their report. They were a third party reviewer who concentrated on the water impact. They said that the application does well with Best Practices to mitigate the impact on water and wildlife. They did however make several suggestions that go above what is required. They said the septic plan is well designed by that CMBG should have a development and implementation plan. They also suggested the right contractor can do a lot for erosion control protection and an annual monitoring program should be put in place to review this during and post construction. Kevin Ryan said the plans were shifted somewhat and that no vernal pools were being filled in, he also stated that six acres of critical habitat for amphibians were being impacted...

Alan Bellows asked how long it would take to establish a solid baseline for a meaningful monitoring program and Laura Demers said it would take a minimum of one year preferably 5 years.

Sue Mello asked questions about storm water runoff, she talked about DEP's assumptions and that risks cannot be taken with the water system.

Heather Hart said that everything is interrelated and won't the six acres impacted impact everything else.

John Lewis asked questions about the life of the septic system and what the backup plan would be. Laura Diemer said the life span is 20 to 25 years and the maintenance plan would detect problems before they became problems for the lake. Bill Cullina stated later that the state requires them to have a licensed operator on site to operate the system with a formal maintenance and inspection program overseen by the state.

Bill Cullina said the last thing that CMBG wants is to cause problems. He questions how it will be known whether the phosphorus in the lake is from CMBG or somewhere else. This led to a discussion about specific areas and how collection points could be identified.

Alan Bellows asked if the erosion control plans in the application would be used as sited to test and Laura Demers said yes.

Sue Mello questioned how this would be possible without a baseline. And Laura Demers said it would be tough.

Kevin Anthony questioned and discussed the DEP model and other models and the different amounts that have been mentioned and that there should only be one threshold.

Dr. Anthony questions how the phosphorus levels are calculated and where the numbers are coming from.

Trish Monroe asked if anyone present had any say in the decision and Alan Bellows said no, the decision was not up for popular vote, the board would make the decision based on facts and specific criteria.

Sally Smith asked what the ultimate design capacity was. The new system under discussion has a design capacity of 10,000 GPD.

Bill Cullina said that CMBG went by what the DEP standard are which they are required to do.

Ron Ginger said he believes the study said this meets the codes today.

**Coastal Maine Botanical Gardens Comments:**

Jan Wiegman, a rep. from Wright Pierce summarized the material that has been submitted since the last meeting. He talked about the site lighting, removing existing paving, reduction in impervious surfaces in the Water Reservoirs Protection District., screening between parking and abutters, details of the waste water system, circulation routes, response to letter from the Anthony's Helen Meserve asked if the septic system was under the parking lot.

Mr. Wiegman explained what the system is, what its design capacity is, and briefly how the treatment system would work. He also explained that this would not be the only system and that existing and other (future) proposed systems were outside the watershed overlay area.

Mr. Wiegman also provided comments back on the FB Environmental report. These comments summarized information provided in a letter from Wright Pierce to the Planning Board.

When asked about people using GPS and trying to access the Gardens via Gaecklein Road Mr. Cullina said that MDOT has looked at the plan and gave recommendations for mitigations but that GPS was beyond the Gardens control.

**Abutter's comments:**

Kevin Anthony said he has already given most of his comments to the Board so he would not go into detail at this time. He said that his parents well is only 67' from the boundary and marked the location of the well on the plans that were shown. Jan Wiegman from Wright Pierce stated that they had estimated the setback of the septic disposal field from the Anthony's well to be 330 feet. He confirmed their estimate was based on the location that Kevin Anthony noted on the plan.

Jason Anthony said he had questions about setbacks in the Shoreland Overlay, he did not think the ordinances were being met by the Gardens. He said the town does not have to agree with DEP, they can be stricter. He talked about a rare wetland, a pocket swamp with a rare tree. He talked about lights and headlights. He also said his family has appealed the DEP permit. He said they are not opposed to the Gardens just the scale of this project.

Bill Cullina addressed the Pocket Swamp and answered questions about it.

**Boothbay Region Water District comments:**

Bill Harwood, the attorney for the BRWD said he had submitted his comments in writing to the board and he went on to explain that the district is not opposed to CMBG but that it is important to focus on protecting the drinking water of the region. He said that risks cannot be taken. Knickerbocker is not as healthy as it should be now and that the only way to ensure there is no more pollution in the Watershed would be to prevent further development in the watershed. He said the Gardens have other land they could expand on and not be in the Watershed area, he encouraged that they take time and move out of the watershed. He said that the BRWD does not view the gardens as either an educational institution or a museum.

**Public Comments:**

Hildy Johnson asked if this expansion was part of the original plan and if it has to be done now. She feels this is being rushed. Mr. Cullina said there have been five master plans so far, he said there is a threshold of growth, and they do not want to just keep growing forever.

Ron Ginger said he did not think it was being rushed a decision has already been delayed three meetings.

When questioned about the number of parking spaces, Mr. Cullina said they are planning 651 spaces and 300 more overflow, in a grass field south of Gaecklein Road that may not ever be used.

Melissa Cullina a Botanist who works at CMBG, talked about what makes them a museum and an education facility. She said the gardens want to do right by the environment and talked about the gardens, what they are doing and the good work that is being done.

A member of the audience said they had questions about the report from the independent consultants and this this is too big an expansion and too close to the Watershed.

Mr. Cullina said that almost all of the current development is outside of the watershed and that of the 270 acres they own only so much could be used for parking because of the rocky coast.

Jon Tindal said that the Town ordinances adopted DEP standards and that it is more restrictive than ordinary development. He also pointed out that the independent consultant explained that Best practices were being used.

Sue Mello said that CMBG is not being held to higher standard and that there are problems with the DEP calculations.

The attorney for CMBG said there is a lot of focus on the standard, the DEP standard is what they are required to follow. If people don't like the DEP standard then they need to take their concerns to the right people to change them.

A member of the audience talked about the elevation of the gardens and how this will affect the run off, that this project should have public sewer and water. He talked about the affect this could haven not only on the public water supply but on West Harbor Pond. He said there are solutions.

A comment was made about noise. Mr. Cullina stated there in the future CMBG will no longer serve as a venue for weddings.

### **Public Hearing was closed at this point.**

#### **Planning Board Comments:**

Mike Tomacelli said he had not seen the plans for the septic system that was to go under the parking lot. Mr. Cullina said they were still in the tail end of the design stage. Jan Wiegman put the plans up on the board so all could look at them and he briefly explained them and answered questions. The state requires that a licensed operator be hired to operate, test and monitor the system.

Alan Bellows said he believe that CMBG meets the definition of a museum and education facility. The ordinance has no definition for museum so he read a definition that stated a museum is "a building or institution dedicated to the acquisition, conservation, study, exhibition and educational interpretation of objects having scientific, historical, cultural or artistic value".

#### **Findings of fact:**

The owners are Coastal Maine Botanical Gardens, relating to the property located at 132 Botanical Gardens Drive, represented by Bill Cullina. Property is exempt from property taxes.

The property is located at 132 Botanical gardens Drive. The property is in the General Residential District, Shoreland and Watershed Overlay Zones and Water Reservoirs Protection District. The property is further identified as Assessor's tax map/lots: R04/0109, 24, 23. Proposed area of development contains an approximate total of 167 acres.

The deed for the proposed project can be seen at the Lincoln County Registry of Deeds in Book 4751 on page 119.

The applicant requests approval to construct a new entrance road improvements, a Visitor Center and Gift Shop, new entrance experience with drop-off plaza and pedestrian bridge to enter the gardens and visitor and staff parking lots.

**Conclusions:**

Alan Bellows made a motion that the applicant has demonstrated Right Title or Interest on the property in question and Melinda Browne seconded the motion. Vote: 5-0 in favor.

Alan Bellows made a motion that the applicant has demonstrated that this proposal meets the criteria set forth in Section 1.8 and 3.6 (A-H) Review Criteria of the Town of Southport Zoning Ordinance and Tim Utley seconded the motion. Vote: 5-0 in favor.

Alan Bellows made a motion that the applicant has demonstrated that this proposal meets the criteria set forth in Sections 3.9.4, 3.9.4.1, 3.9.4.1.1, 3.9.4.1.2 General Residential District of the Town of Boothbay Zoning Ordinance and Melinda Browne seconded the motion. Vote: 5-0 in favor.

Alan Bellows made a motion that the applicant has demonstrated that this proposal meets the criteria set forth in Sections 3.9.4.4, 3.9.4.4.1, 3.9.4.4.1.1, 3.9.4.4.1.2, 3.9.4.4.1.3, 3.9.4.4.1.4 Development and Performance Standards of the Town of Boothbay Zoning Ordinance and Melina Browne seconded the motion. Vote: 5-0 in favor.

Alan Bellows made a motion that the applicant has demonstrated that this proposal meets the criteria set forth in Sections 3.9.4.4.2, 3.9.4.4.2.1, 3.9.4.4.2.2 Structures of the Town of Boothbay Zoning Ordinance and Melinda Browne seconded the motion. Vote: 5-0 in favor.

Alan Bellows made a motion that the applicant has demonstrated that this proposal meets the criteria set forth in Section 3.9.9, 3.9.9.4, 3.9.9.4.3, 3.9.9.4.3.2, 3.9.9.4.3.2.1, 3.9.9.4.3.3 Development and Performance Standards of the Town of Boothbay Zoning Ordinance and Melinda Browne seconded the motion. Vote: 5-0 in favor.

Alan Bellows made a motion that the applicant has demonstrated that this proposal meets the criteria set forth in Section 3.10.7 Commercial Development next to a Residential Use of the Town of Boothbay Zoning Ordinance and Melinda Browne seconded the motion. Vote: 5-0 in favor.

The board briefly discussed that a buffer of natural vegetation is allowed by the ordinance and Mike Tomacelli verified that this would occur around the perimeter of the parking lots.

Alan Bellows made a motion that the applicant has demonstrated that this proposal meets the criteria set forth in Sections 3.11.5 and 3.11.5.1 Cuts and Fills of the Town of Boothbay Zoning Ordinance and Melinda Browne seconded the motion. Vote: 5-0 in favor.

There was a discussion mostly about if the septic plans change it is possible that some of the Slopes could change.

Alan Bellows made a motion that with conditions, the applicant has demonstrated that this proposal meets the criteria set forth in Sections 3.11.10, 3.11.10.1, 3.11.10.2, 3.11.10.3, 3.11.10.4, 3.11.10.5 Erosion and Sedimentation Controls of the Town of Boothbay Zoning Ordinance and Melinda Browne seconded the motion. Vote: 5-0 in favor.

Alan Bellows made a motion that the applicant has demonstrated that this proposal meets the criteria set forth in Section 3.11.11 Lighting of the Town of Boothbay Zoning Ordinance and Melinda Browne seconded the motion. Vote: 4-1 in favor with Tim Utley casting the negative vote. After a discussion about the lighting Tim Utley rescinded his negative vote. Final vote: 5-0 in favor.

Alan Bellows made a motion that the applicant has demonstrated that this proposal meets the criteria set forth in Sections 3.11.13, 3.11.10.1, 3.11.13.2, 3.11.13.3.1, 3.11.13.3.2, 3.11.13.3.3 Noise of the Town of Boothbay Zoning Ordinance and Melinda Browne seconded the motion. Vote: 5-0 in favor.  
The board discussed the noise before voting.

Alan Bellows made a motion that the applicant has demonstrated that this proposal meets the criteria set forth in Sections 3.11.14 Outdoor Storage of the Town of Boothbay Zoning Ordinance and Melinda Browne seconded the motion. Vote: 5-0 in favor.

Alan Bellows made a motion that with conditions, the applicant has demonstrated that this proposal meets the criteria set forth in Sections 3.11.15 Parking and loading 3.11.15.1.1, 3.11.15.1.3, 3.11.15.5, 3.11.15.1.6, 3.11.15.2 Access Standards for other than one and two family residential uses 3.11.15.2.1, 3.11.15.2.2, 3.11.15.2.3, 3.11.15.2.4, 3.11.15.2.4.1, 3.11.15.2.5, 3.11.15.2.6, 3.11.15.3 Parking Area Standards for other than one and two family residential uses 3.11.15.3.1, 3.11.15.3.2, 3.11.15.3.3, 3.11.15.3.4, 3.11.15.3.4.1, 3.11.15.3.5, 3.11.15.3.6, 3.11.15.3.7, 3.11.15.3.8, 3.11.15.3.9, 3.11.15.3.10, 3.11.15.3.11, 3.11.15.3.12, 3.11.15.4 Minimum Parking requirements 3.11.15.4.1, 3.11.15.4.2, 3.11.15.4.2.1 Parking Requirements of the Town of Boothbay Zoning Ordinance and Melinda Browne seconded the motion. Vote: 5-0 in favor.

The board discussed the prevention of traffic backing up onto the main road. Also discussed was that MDOT has already given a permit for the road and that this will open up a potential entrance to the Gardens from the Gaecklein Road.

Alan Bellows made a motion that with conditions, the applicant has demonstrated that this proposal meets the criteria set forth in Section 3.11.16, Roads and Driveways, 3.11.16.1 General, 3.11.16.1.4, Drainage Standards 3.11.16.2, 3.11.16.2.1, 3.11.16.2.1.1, 3.11.16.2.1.1.1, 3.11.16.2.3, 3.11.16.2.3.1, 3.11.16.2.3.2, 3.11.16.2.3.3, 3.11.16.2.3.4, 3.11.16.2.4, 3.11.16.3 Location Standards, 3.11.16.3.2, 3.11.16.4.2 Emergency Vehicle Access, 3.11.16.4.2.1 Roads and Driveways of the Town of Boothbay Zoning Ordinance and Melinda Browne seconded the motion. Vote: 5-0 in favor.

Alan Bellows made a motion that with conditions, the applicant has demonstrated that this proposal meets the criteria set forth in Section 3.11.17 Roadside Trees and Walls of the Town of Boothbay Zoning Ordinance and Melinda Browne seconded the motion. Vote: 5-0 in favor.

Before voting the board discussed that trees will only be removed as necessary. A condition will be imposed governing erosion control measures to be taken along Gaecklein Road.

Alan Bellows made a motion that with condition, the applicant has demonstrated that this proposal meets the criteria set forth in Section 3.11.18 Sanitation 3.11.18.1 General, 3.11.18.1.1, 3.11.18.1.2, 3.11.18.1.2.1, 3.11.18.1.2.2, 3.11.18.1.2.3, 3.11.18.1.2.4, 3.11.18.2 Subsurface Wastewater Disposal, 3.11.18.2.1.2, 3.11.18.2.2, 3.11.18.2.3, 3.11.18.2.4, 3.11.18.2.5, 3.11.1.2.6, 3.11.18.2.6.2, 3.11.18.2.6.3, 3.11.18.2.7 Sanitation of the Town of Boothbay Zoning Ordinance and Melinda Browne seconded the motion. Vote: 5-0 in favor.

The board had a lengthy discussion on all aspects of this before making their decision and Conditions.

Alan Bellows made a motion that the applicant has demonstrated that this proposal meets the criteria set forth in Sections 3.11.19 Screening, of the Town of Boothbay Zoning Ordinance and Melinda Browne seconded the motion. Vote: 5-0 in favor.

Alan Bellows made a motion the applicant had demonstrated that this proposal meets the criteria set forth in Section 3.11.20, 3.11.17.4, 3.11.20.4.1, 3.11.20.4.1.1, 3.11.20.4.1.2, 3.11.20.4.1.3, 3.11.20.4.1.4 Signs of the Town of Boothbay Zoning Ordinance and Melinda Browne seconded the motion. Vote: 5-0 in favor.

Alan Bellows made a motion that the applicant has demonstrated that this proposal meets the criteria set forth in Sections 3.11.22, 3.11.22.1, 3.11.22.2 Storm Water Runoff of the Town of Boothbay Zoning Ordinance and Tim Utley seconded the motion. Vote: 5-0 in favor.

There was a lengthy discussion among board members before this motion was voted on.

Alan Bellows made a motion that with a condition the applicant has demonstrated that this proposal meets the criteria set forth in Section 3.5.4.3.3.1 Traffic and Melinda Browne seconded the motion. Vote: 5-0.

Alan Bellows made a motion that with a condition, the applicant has demonstrated that the applicant has demonstrated that this proposal meets the criteria set forth in Section 3.5.4.3.3.2 Public Safety. The Town attorney suggested that a single condition be imposed that all required federal, state and local approvals must be obtained. Alan Bellows withdrew the original motion and made a motion we accept the condition suggested by the town attorney. Melinda Browne seconded the motion. Vote: 5-0 in favor.

Alan Bellows made a motion that the applicant has demonstrated that this proposal meets the criteria set forth in Section 3.11.23, 3.11.23.1, 3.11.23.1.1, 3.11.23.1.2 Structures of the Town of Boothbay Zoning Ordinance and Melinda Browne seconded the motion. Vote: 5-0 in favor.

Alan Bellows made a motion that the applicant has demonstrated that this proposal meets the criteria set forth in Section 3.11.24 Waste Disposal of the Town of Boothbay Zoning Ordinance and Melinda Browne seconded the motion. Vote: 5-0 in favor.

Before voting there was a lengthy discussion about the cost and prohibiting factors of putting in Public sewer and water at this time.

Alan Bellows made a motion that the applicant has demonstrated that this proposal meets the criteria set forth in Section 1.8 and 3.6 (A-H) Review Criteria of the Town of Southport Zoning Ordinance and Tim Utley seconded the motion. Vote: 5-0 in favor.

**Decision:**

Based on the above findings of fact and conclusions, the plans and supporting information submitted, testimony and evidence submitted at the Planning Board meetings on the application, on a motion made by Alan Bellows and seconded by Tim Utley the Planning Board approved the development permit application subject to the conditions of approval set forth below, all for the reasons set forth in the findings and conclusions. Vote: 5-0 in favor.

**Conditions:**

- Entrance to the Botanical Garden property along Gaecklein Road must be gated and locked except at times when they are in use by Botanical Garden Staff, subcontractors or vendors for operational necessity. Keys, combinations or other appropriate access control devices will be provided to the Fire Chief and Ambulance Service to facilitate emergency access. When special events such as Gardens Aglow are occurring, signs will be posted at the end of Gaecklein Road to indicate that there is no public access to the Gardens via that road.
- All filling along Gaecklein Road will be stabilized with erosion control mats and other methods to ensure there is no erosion until the permanent landscaping is fully established. The permanent landscaping will be maintained to prevent erosion.
- Before construction starts on extensions to Botanical Gardens Drive, CMBG will provide a signed statement from the Fire Chief that the proposed plans provide adequate turnaround area for emergency vehicles.

- If the test pits for any of the proposed septic systems show a depth to limiting factor of 24" or less, a second site with suitable soils with adequate capacity will be identified on a plan and restricted from future development by a deed restriction filed at the Lincoln County Registry of Deeds.
- Planning Board approval is conditional upon receipt of a septic design approved by DHHS, the local plumbing inspector and any other agencies that approval is needed from, showing the design meets all required state and local requirements. If any of those approvals require any changes from the plans approved by the Planning Board, those changes must be approved by the Planning Board.
- Validation from CMBG that the septic is at least 300 feet from the abutters well as required by DHHS standards.
- CMBG has 60 days from approval to have a draft plan that is designed and mutually agreed upon between The Boothbay Region Water System, CMBG and the Town of Boothbay to have a storm water management monitoring and data collection plan in place which will include a monitoring program and data collection. Focus of the plan should be on monitoring on or immediately adjacent to CMBG property rather than at the lake itself, to best separate CMBG affects from other issues in the watershed.
- The third party contractor responsible for inspection and maintenance of the stormwater management BMP's will submit an annual report to the town including maintenance and inspection logs and a summary of findings including any issues and corrective actions.
- Before any work commences on this project all approvals needed from other agencies must be obtained, except for the Fire Marshalls construction permit which will be part of the certificate of occupancy. If any of those approvals require any changes from the plans approved by the Planning Board, those changes must be approved by the Planning Board.
- The property shown on this plan may be developed and used only as depicted on this approved plan. All elements and features of the plan and all representations made by the applicant in the record of the Planning Board proceedings are conditions of the approval. No change from the conditions of approval is permitted unless an amended plan is first submitted to and approved by the Planning Board.

6. ADJOURN MEETING: Mike Tomacelli made a motion to adjourn the meeting at 11:05PM and Tim Utley seconded the motion. Vote: 5-0 in favor.

Minutes respectfully submitted  
 Sherry Tibbetts  
 Secretary