

Calais Conservation Commission Minutes

Special Meeting

8/31/2022 - Calais town hall

Present: Larry Bush, Mark Brown, Julie Hand(Via Zoom), Stephanie Kaplan (Chair)

Guests: Planning Commission members John McCullough, Jan Ohlsson, Melanie Kehne; Calais Lakes & Streams Committee members Noreen Bryan, Galen Whittaker, Colleen Bloom, Larry Bush; Members of the public Scott Bassage (recorder), Reed Cherington, Charlotte Hanna, Peter Harvey (via Zoom)

The meeting was called to order at 7:15 pm.

- Additions:
 - None.

- Minutes
 - The commission approved the minutes of August 8, 2022. (Brown, Bush)

- Shoreland Zoning revisions
 - The Chair explained that the purpose of this special meeting on shoreland zoning was for the CC to hear comments from the Calais Lakes and Streams Committee (CLSC) and develop their position on the proposed draft revision of the Calais shoreland zoning ordinance. Members of the Planning Commission in attendance said they were there only to listen and not to participate. The Planning Commission will hold a regular meeting on September 6 and a public hearing about the revised Ordinance on September 20, 2022. Members of the CLSC and CC are invited to attend The Sept 6 meeting to ask questions and discuss the proposed revisions with the PC.
 - Members of the CLSC, Larry Bush and Noreen Bryan, presented the committee's analysis of how the current draft revision of the Zoning Ordinance would impact Calais shorelands.
 - After studying the current (8-1-22) draft regulations, they have a number of concerns, including that if the town votes to adopt the Zoning Ordinance in its current form, the Town would no longer have a say in changes to existing shoreline lots.
 - The notes for Noreen Bryan's and Larry Bush's presentations are attached.
 - CC members asked questions and several issues were clarified. Mark Brown asked how shoreland protection for Number Ten Pond would be affected by the newly designated North Calais Village Center. Noreen responded that when the State Shoreland Protection Act does not apply, only then would the Calais Ordinance apply. However, the State Shoreland Protection Act would apply in almost all cases.

- Mark asked about notices and at what point the public would have an opportunity to weigh in. Larry explained that public notice and participation is more limited under the State Shoreland Protection Act than under Calais shoreland protection regs.
 - After hearing the CLSC's comments, PC Member John McCullough apologized for interrupting but wanted people in the meeting to know that the PC is not proposing to give up permitting to the state. John said that he thought CLSC should come to the PC meeting. He then left the meeting.
 - After further discussion, Noreen said that from her perspective the question is "What rules apply?"
 - PC members Jan Ohlsson and Melanie Kehne and the CC agreed that it's important that they and the CC and the CLSC meet on September 6 and figure out what the PC's intent is, what the proposed regulations say, and whether they implement the PC's intent.
- Curb Cut
 - Stephanie explained that the Selectboard wants to revise the regulations to do with curb cuts and that she wants the CC to provide input and the SB welcomes it. Because of the need to discuss the agenda item about town hall landscaping and lack of time for both, the discussion about curb cuts was postponed.
 - Town Hall Landscaping
 - Stephanie explained that there is money left over from the Emerald Ash Borer (EAB) grant from the Urban & Community Forestry (UCF) Program and that it had been decided (and approved by the SB) to use this money for landscaping around the Calais Town Hall.
 - Reed Cherington said that what is most needed is some topsoil around the Town Hall. Reed also said that the look of a stark landscape is appropriate for a nineteenth century building. Scott Bassage agreed.

There was general discussion about the problem with maintaining anything that is planted on public land in Calais.

- Mark asked if terms of the EAB grant would permit the CCC to give money to the Friends of the Town Hall, or some other entity, for Topsoil. Stephanie said the use of the grant money is not being monitored, but its purpose was for purchasing and planting trees.

The meeting adjourned at 9:02 (Bush, Hand)

To Do List:

ALL: Read Shoreland Overlay District section of revised Zoning Ordinance.

https://www.calaisvermont.gov/vertical/sites/%7B226D684E-C864-4AFA-B4A5-59BE32741B77%7D/uploads/8.01.22_CD_Calais_2021-2022_amendments_to_Zoning_Regs_OFFICIAL_DRAFT_.pdf

All: Attend September 6 Planning Commission meeting.

Stephanie: If necessary (because quorum would be present), warn the September 6th meeting with the Planning Commission.

Stephanie: Find out how much money is left from the EAB Grant (Also Conservation Fund?)

Stephanie: Ask Jamie Morby what is the mission and status of the edible garden behind the town hall.

Scott: Ask Barbara Weedon if she will meet with CCC to talk about a Town Hall Landscaping plan.

Scott: Ask David Schutz and Barbara Butler about the role and status of the friends of the Town Hall vis a vis landscaping.

Scott: Ask Jeremy/Jamie to remove “Town Hall Committee” from the web site because it apparently has been disbanded.

Bush presentation to CC meeting 31 Aug. 2022

Planning Commission proposed Shoreline zoning regulations

Noreen and I must cover a lot of ground and want to be clear and concise. And we want to finish it. We would ask that you please hold questions or comments until both of us have finished, with one exception: if anything we say is materially incorrect, please let us know.

- 1) Thank PC for hard work, for extending shoreland protections across public roads
- 2) Recognize that Shoreland proposals are only one component of a large and complicated set of proposals.
- 3) I am going to offer a few comments on background for where we are today. I was not a personal participant in this and rely on others for my understanding. If I make any substantive inaccurate statements please let us know.
- 4) A) Calais has had detailed Shoreland Protection regulatory standards in its zoning since before the Vermont Shoreland Protection Act was passed in 2014.

B) The current Calais shoreland zoning provisions were approved in 2017. They have extensive coverage, built around a shoreland district, not an overlay and they are applied and enforced by Calais officials—chiefly the Zoning Administrator and the Development Review Board.

C) There were strenuous but unsuccessful efforts after 2014 to do away with Calais shoreland regulations and eliminate review by the ZA and DRB of things that were covered by the state statute.

These failed and Calais shoreland regulation was retained. Thus, Calais has retained its legal right to regulate its shoreland, concurrently with the state.

D) The current PC draft returns to the failed effort above, depriving Calais of its authority—acting through the ZA and DRB—to regulate anything that is covered by the State statute:

- i) Section 3.12 Protection of Natural Resources
 - 6) Within the Shoreland Overlay District, **development shall avoid**, minimize, or mitigate any adverse **impacts** to water quality and other natural resources **by complying with a Vermont Shoreland Permit where required**. Where no state Shoreland Permit is issued complying with the Calais Shoreland Overlay District shall be required. See Table 2.4.
- ii) Table 2.4 Shoreland Overlay District
 - (E) Conditional Uses—None of the conditional uses require Calais DRB approval if authorized by a State Shoreland Permit.
 - (G) Shoreland Buffer Zone Standards—none of the listed substantive standards apply or can be enforced by Calais for new development if the State has approved or permitted it.

BUT,

(H) Nonconforming Uses and Structures, and (H) Shoreland Upland Zone Standards appear to contain requirements of Calais law not expressly negated by obtaining a State permit or approval. What does this mean? Are these provisions unqualified by the previous provisions that exclude Calais standards and enforcement procedures if there is a State permit or approval?

E) The PC draft extends the Calais Shoreland District/or Overlay across public roads. State law does not. For these areas Calais keeps its regulatory authority and substantive standards, which are listed in the draft.

F) The CLSC opposes prohibiting substantive review by town officials, for reasons both substantive and procedural:

- i) It deprives Calais, its residents and officials from having adequate notice and opportunity to be heard:

The entire process is conducted within the Department of Environmental Conservation's Shoreland Permitting office.

Once the application is deemed complete by the Program (i.e., all the required information is provided and the fee is paid) it will be placed on a **required 30 day public notice**. Shoreland Permitting expects to issue permit decisions shortly after the public notice period is up, unless there are still outstanding permit issues to address.

"Public notice" under the State Shoreland statute means:

At the time an applicant submits a permit application to ANR, they shall also provide a copy of the application form to the municipal clerk of the municipality in which the impervious surface or cleared areas are proposed. The **municipality may post the application in the town clerk's office.**

Shoreland Permitting will then **post the application on their website for 30 days** to provide the public and interested persons an opportunity for written comment, which will take place concurrently with Shoreland Permitting's permit application review.

Land Record Recording - The permittee will **record a copy of the [approved] permit** in the land records of the municipality in which the permitted project is located.

Under Calais law, if a matter is subject to DRB review, there are notices posted according to law and if a permit is granted there is a notice posted at the site of the permit for 15 days. In all cases the public is given local notice, in multiple ways, of any activity that requires approval under the Town's zoning laws.

- ii) Many of the substantive standards of State shoreland law are inadequate and existing or CLSC proposed town standards would better protect lakes and ponds.

OVER TO NOREEN BRYAN--

TOPICS FOR DISCUSSION

- Why replace the Shoreland District with an overlay district?
- Loss of protections for lakes and ponds resulting from replacing Calais Shoreland Zoning with VT Shoreland Protection Act
- Other Protections that are needed

Note: This is a working document that has been created through review of the Vermont Shoreland Protection Act Handbook, the Proposed Amendments to the Calais Zoning Regulations, the current Calais Zoning Regulations (2017), and the Maine Zoning Regulations. Due to time constraints this is being shared as a draft. Further, verification of the information contained herein is needed to assure accuracy.

Why replace the shoreland district with an overlay district?

Disadvantages:

- Eliminates the following dimensional standards contained in current Calais Shoreland District, specifically,
 - Minimum Lot Area: 3 acres above mean watermark
 - Minimum Road Frontage: 300 ft.
 - Minimum Setback Front: 40 ft (from town road centerline), 25 ft (from property line fronting private road)
 - Minimum Setback Rear: 25 ft
 - Minimum Shoreland Frontage: 300 ft. (Note: In SHROD it is replaced with Minimum Shoreline Frontage (for properties on the shoreline))
 - Maximum Building Height: 35 ft.
 - Driveway Standards
- Depends on underlying zone to provide these standards. In the Proposed Amendments to Shoreland zoning the underlying zone is not specified. Hence the reader does not know what standards apply.
- The underlying zone could change without consideration of the impact on the shoreland. For example, if the underlying district is the Rural Residential District then the minimum lot area would continue to be 3 acres. However, if the underlying district is changed to the Village District, there is no minimum lot area. This would have grave environmental and developmental consequences for the shoreland of lakes and ponds. If a shoreland overlay district is retained, then the underlying district (s) needs to be identified therein and regulations for changing the underlying district need to be specified.
- Difficult to understand and administer.

Advantages: ?????

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Impact of Replacing current Calais Shoreland Zoning with Vermont Shoreland Protection Act

Per the proposed zoning amendments, protection of Calais lakes and ponds will be accomplished through compliance with the VT Shoreland Protection Act, specifically the VT Shoreland Permitting process. The regulations of the Calais Shoreland Overlay District (SHROD) apply **ONLY** where no state permit is required. (See Section 3.12) This means that the SHROD will apply to very few developments/activities in the shoreland.

For most Calais lakes the preponderance of the shoreline, that is suitable or available for development, has already been broken into lots that are improved with camps and year-round houses. For the small number of new, undeveloped lots, the VT Shoreland Protection Act provides robust protections. However, that is not the case for properties that were developed before the VT Act and are grandfathered. These properties already have impaired buffers and excessive impervious surfaces. These are the properties that will have the greatest impact on the future of Calais lakes and ponds. Our assessment is that the VT Shoreland Protection Act does not provide adequate protections.

The result will be:

- Degradation of lakes and ponds of Calais.
- Failure to “conserve aquatic and wildlife habitat, water quality and foster the recreational and economic benefits of Calais lakes and ponds.” (Stated purpose of Shoreland Overlay District (SHROD))

Here are the reasons. The Proposed Amendments to Shoreland Zoning utilizing the VT Permitting will :

- Allow increased impervious surfaces
- Allow unlimited expansion of existing, non-conforming structures in the Buffer Zone
- Allow steeper slopes for construction and driveways
- Reduce the depth of the Shoreland District from 800 feet to 250 feet
- Remove review and approval of shoreland activities from Calais and move them to the state.

MAXIMUM LOT COVERAGE WITH IMPERVIOUS SURFACES

Definition of impervious surfaces: Manmade *constructed* surfaces, including paved and unpaved roads, parking areas, roofs, driveways, and walkways, that cannot effectively infiltrate rainfall and snow melt. (See Sec 9.3 Definitions)

Criterion	Vermont Shoreland Protection Act 2014	Proposed Amendments to Calais Zoning Regulations	Current Calais Zoning Regulations in 2017	Maine Shoreland Zoning
Maximum lot coverage	20% impervious surface coverage, if mitigation is approved >20% is allowed up to 50%(?) or 60%(?) or 70%(?). No upper limit is specified	Same as VT Act	10% for new developments on 3 acres	20% impervious surface coverage

Concern:

- As specified, the VT Act provision and Proposed Amendments to Calais Zoning Regs will allow expansion of impervious surfaces throughout the Shoreland. The regulations for new lots is far more restrictive than that for existing nonconforming lots and undeveloped lots that existed before July 1, 2014. On new lots an area of only 100 sq ft is allowed for removal of the vegetation in the buffer zone and no structures are allowed to be built therein. On existing and grandfathered lots “holes” in the buffer are allowed to be much larger. For example, consider an existing ¼ acre lot (10,890 sq ft) with a nonconforming structure. The VT regs allow more than 2000 sq ft of impervious surface up to an unspecified amount if mitigations are applied. All of this new impervious surface could be within 100ft of the shoreline within the buffer zone. **In this case, twenty times more impervious surface is allowed. Expansion of impervious surfaces on existing, nonconforming lots will lead to degradation of water quality, loss of wildlife habitat and recreation and economic benefits.**

Recommendation: Revise Sec. 2.4 (F) Dimensional Standards as follows: Maximum impervious surface in SHROD: In the **Shoreland Buffer Zone**, impervious surfaces shall not expand beyond that which existed on March XX, 2023. In the Shoreland Upland Zone, maximum impervious surface is 20%

UNLIMITED EXPANSION OF EXISTING, NONCONFORMING STRUCTURES IN THE BUFFER ZONE

Criterion	Vermont Shoreland Protection Act 2014	Proposed Amendments to Calais Zoning Regulations	Current Calais Zoning Regulations in 2017	Maine Shoreland Zoning
Expansion of footprint of existing, non-conforming structures in buffer zone	Unlimited	Unlimited (Same as VT Act) unless SHROD applies	Expansion of footprint not allowed, except per conditional use approval of DRB (See Sec. 3.8 (B))	<i>“The Thirty Percent Expansion Rule”</i>

Concerns:

- The VT Act and the proposed Calais zoning amendments do not set any limits on the expansion of existing, non-conforming structures in the buffer zone. Rather they rely solely on the regulations for impervious surface to constrain expansion of existing structures. So, with mitigations, a house with a footprint of 2000 sq ft and larger could be allowed in the buffer zone. (See example above.). This means that houses in the buffer zone could be very large and very tall, which would have severe environmental consequences, change the character of the shoreline areas and make these properties inaccessible to most Vermonters.
- Larger houses with more bedrooms would result in much more intensive use of the shoreland areas.

Recommendation: Revise Sec. 2.4 (E) Conditional Uses as follows: Delete: “Enlargement of modification of a nonconforming structure within the Shoreland Buffer Zone.” OR replace with Maine regulations which have the “The Thirty Percent Expansion Rule.” It states: “A non-conforming structure that existed on January 1, 1989 [revise to appropriate date] may be expanded by less than 30% during the remainder of its lifetime. The 30% is based on both the floor area and the volume of the structure as it existed on January 1, 1989 [revise to appropriate date], but only applies to the part of the building that is within the required setback [revise with Buffer Zone]. “Floor area” includes all floors, porches, and decks; “volume” includes spaces that are within the roof and fixed exterior walls.” (Maine Shoreland Zoning Handbook p. 12)

STEEP SLOPES

Criterion	Vermont Shoreland Protection Act 2014	Proposed Amendments to Calais Zoning Regulations	Current Calais Zoning Regulations in 2017	Maine Shoreland Zoning
Maximum slope	20% If stabilization is demonstrated >20% is allowed up to 50%(?) or 60% (?) or, 70% (?). No upper limit is specified	Same as VT Act	15%	

Concern: Slopes of 20% and greater present serious risk of erosion and influx of sediment and nutrients into the pond. Mitigation methods, such as waterbars, ditches and trenches can be expensive to install and require regular maintenance or they fail to be effective. Waterbars were installed on the steep slope of the Curtis Pond Swimming Beach. They have to be maintained at least annually or the water rolls over the top and flows directly into the pond. The steeper the slope the more severe the erosion.

Recommendation: Retain a maximum slope of 15% per the regulations contained in the current Calais zoning Regulations

DEPTH OF SHORELAND DISTRICT

Criterion	Vermont Shoreland Protection Act 2014	Proposed Amendments to Calais Zoning Regulations	Current Calais Zoning Regulations in 2017	Maine Shoreland Zoning
Depth of Shoreland district (feet from mean water level)	250 feet	Same as VT Act	800 feet	Ponds- 250 feet Rivers- 250 feet Wetlands-250feet Streams-75 feet

Concerns:

- If proposed amendments to Calais Zoning Regulations are adopted, the depth of shoreland will be reduced from 800 feet to 250 feet. Science shows that greater depth is needed to protect many species.
- Because the shoreland of Curtis Pond abuts the Village District, the depth of the shoreland has been retained at 800 feet for the eastern and northern shorelines as part of the Calais Shoreland Overlay District (SHROD). However, the regulations of the SHROD are only applicable for properties where a VT Shoreland Permit is not required. It does not appear that there are any properties in the shoreland of Curtis Pond where a VT Permit is not required, so this provision is effectively not applicable and will not provide additional protections.
- The Calais zoning maps do not accurately reflect the 800 foot shoreland district for Curtis Pond. The maps only show the 800 foot shoreland for portions of the eastern shoreline. Some portions of the eastern shoreline and all of the northern shoreline are missing on the Calais zoning maps.

Recommendation: Retain the 800 foot depth of the shoreland and require that all properties comply with Calais Shoreland Zoning.

OTHER PROTECTIONS THAT ARE NEEDED

MAXIMUM CLEARED AREA-

Definition of cleared area per current Calais Zoning Regulations: That portion of a parcel not having Natural Ground Cover. Examples include lawns and mowed areas, imported organic or stone mulches, or other artificial materials. (see Article 9 of 2017 Calais Zoning Regulations).

Definition of cleared area per proposed Amendments to Calais Zoning Regulations: An area where existing vegetative cover, soil, tree canopy or duff has been permanently removed or altered.

Criterion	Vermont Shoreland Protection Act 2014	Proposed Amendments to Calais Zoning Regulations	Current Calais Zoning Regulations in 2017	Maine Shoreland Zoning
Maximum cleared area	40%, If mitigation approved >40% is allowed and could be up to 100%. No upper limit specified	40% to 100% (Same as VT Act)	None	

Concerns:

- Current Calais Zoning Regulations do not set a maximum for cleared area and definition of cleared area is inadequate.
- Provision of the VT Act is an improvement because it sets a standard for cleared area in the Shoreland. However, it makes no distinction between the impact of clear cutting in the Buffer Zone versus the Upland Zone. Further, there is no limit to how much area is allowed to be clear cut if mitigations are approved. This means that in the extreme nearly all of the Buffer Zone could be clear cut. Compare this to a new lot where the regulations allow a maximum of 100 sq ft of clear cutting in the buffer zone. Conclusion: this standard is ineffective in preventing excessive clear cutting, particularly in the Buffer Zone.

Recommendation: Use the revised definition of cleared area and Create a regulation for maximum cleared area in Calais Shoreland zoning as follows:

Maximum cleared area in Shoreland Buffer Zone is limited to 100 sq ft in accordance with the Vermont Shoreland Protection Act plus a 6-foot-wide path to the shoreline. For properties developed prior to the enactment of the Vermont Shoreland Protection Act in 2014, restoration of the buffer shall be required as part of any new construction or addition of impervious surfaces.

Maximum Cleared Area in the Shoreland Upland Zone is 40%.

MOWING OF LAWNS

Concerns:

- VT Shoreland Protection Act does not address mowing of existing lawns. They are counted in clear cut area.
- The proposed Amendments to Calais Shoreland Zoning allow lawns that have been mowed once every two years to continue if no new developments take place.
- Science recognizes the harm of lawns caused by mowing, stormwater runoff, application of fertilizers and loss of shade along the shoreline. It is known that the presence of lawns along the shoreline lead to excessive algae growth, loss of native aquatic plants, loss of habitat for baby fish and stimulation of eutrophication of lakes and ponds.

Recommendation: Revise Calais Shoreland Zoning as follows:

Sec. 2.4 (G) 8 Lawns within the Shoreland Buffer Zone shall be eliminated and the buffer restored with a planting of native trees and shrubs according to the following schedule:

- By 2025 a 25 foot deep buffer of native trees and shrubs shall be planted along the shoreline.
- By 2028 the buffer shall be extended to 50 feet along the shoreline.
- By 2030 the buffer shall be extended to 100 feet along the shoreline

After 2030 the only cut-outs in the buffer shall be non-conforming structures, a driveway of the following specs (?), a 100 sq ft clear cut space and a 6-foot-wide path to the lake or pond.