

TOWN OF YORK PLANNING BOARD  
THURSDAY, OCTOBER 14, 2004, 7:00 PM  
YORK PUBLIC LIBRARY

Chairman Barrie Munro began the meeting at 7:00. The full board attended: Barrie Munro, Dave Marshall, Glenn Farrell, Glen MacWilliams, Richard Smith, and alternates Tom Manzi and Lee Corbin. Town Planner Steve Burns represented the Planning Office. Patience Horton took Minutes. The meeting was televised. Eleven motions were made, plus one motion was never seconded.

**Public Announcement**

**Announce the upcoming Public Forum during the October 28 Planning Board workshop to initiate work on the Rural zones amendments to the Zoning Ordinance**

Steve Burns announced that at the October 28 workshop meeting, the effort would begin to change rural zoning, which affects about 80% of the town. State law, the Comp Plan, and ordinances will be examined as part of a deliberate, spelled-out process enabling a draft to be ready in January, 2005. Barrie Munro emphasized the importance of the effort. The work on the rural zones is Comp Plan Item 1.1, the very first item of all.

**Public Input**

**Open to the public to address issues other than those scheduled for hearings on this agenda.**

Planning Board member Glen MacWilliams came forward as a York resident. In his October 14, 2004 Memo to the Planning Board about its policy over unauthorized changes, he stated that he does not feel that the Board has upheld the law by not holding JL Corp in default for its building a 10,000 square foot building with parking suitable for a 5,000 square foot building. He asked that the Board notify the applicant that the changes are not approved. Glenn Farrell responded that the Town has been consistent with the way it handles things. If Town Engineer John Treat said that the change is fine, then it is not the applicant's problem. The Board cannot make quick decisions about changes. If the Town Engineer wants a change, and the applicant was approved for something else, the applicant will go for what is already arranged, Glenn Farrell said. Having every change come back to the Planning Board is ridiculous. Time has to be used efficiently. Chairmen Barrie Munro deferred the issue to the end of the meeting, under "Other Business."

**Minutes**

**Review and approve draft minutes.**

Barrie Munro opened the discussion of the September 9, 2004, Minutes by asking if the Minutes accurately and satisfactorily represent the discussion that took place regarding the Walter Woods default, which was being appealed. Steve Burns specified all the following changes for the Bayberry Ridge/Walter Woods item from the September 9 agenda, with the exception of Tom Manzi's requested change. Changes are underlined.

- In Paragraph 1, which begins “Town Planner Steve Burns,” the second sentence is clarified to read, “or vote that he is in default with regard to Spring Pond Ph. 1” (The underlined language was inserted).
- In Paragraph 2, which begins **MOTION**, the change is, “Findings of Fact” (It had said Findings of Fault).
- In Paragraph 3, which begins, “In discussion,” the change is, “Tom Manzi asked if the Planning Board has jurisdiction” (not “said that”).
- In Paragraph 3, which begins, “In discussion,” the change is “the applicant couldn’t come back to the Planning Board on any application” (The language was inserted for clarification).
- At the end of Paragraph 3, the change is “a continuing situation that threatens public health and safety” (The underlined word replaces the words “is against”).
- In Paragraph 4, which begins “Furthermore,” a section of the first sentence now reads, “in Article 2 of the zoning ordinance” (The language was inserted for clarification).

Those are the complete changes made to the Bayberry Ridge hearing. Other changes were made other applications in the same Minutes, as follows.

On the **Stones Throw Condos** application, Glen MacWilliams asked that in the Motion made at the end of the hearing, the words “conditions of providing meets and bounds” be replaced with “bearings and dimensions.”

On the **David Woods’ Project** application, Glen MacWilliams asked that the words “meets and bounds” again be replaced with “bearings and dimensions.”

Finally, in the **Other Business/Adjourn** section of the same Minutes (9/9/04), Glen MacWilliams asked that the language in the third bulleted item, “On the Zoning by Map item” be changed to “On the Shoreland Zone Boundary Amendment.”

**Motion** Glen MacWilliams moved, and Dave Marshall seconded to approve the September 9, 2004, Minutes as amended. The vote passed, 4-0. Barrie Munro, Tom Manzi, and Lee Corbin did not vote on the item, as there were not present at the original meeting.

The September 23, 2004, Minutes were discussed. Glen MacWilliams pointed out that all references to “Blue Sky” must be changed to “Blue Star,” as that is the correct name of the corporation.

**Motion** Glen MacWilliams and Dave Marshall moved and seconded to approve the September 23, 2004 Minutes as corrected. The vote passed, 5-0. All five full Board members had attended and were voting.

## Applications

**Hannaford Bros. Company/Kennebunk Savings Bank Map53/Lot 27. Public Hearing. Conceptual review of application for new bank on the lot in front of Hannaford supermarket.**

Glenn Farrell stepped down from this hearing. Town Planner Steve Burns said that he thought it was a good plan and complimented the architect. Kennebunk Savings Bank Vice President Brenda Keene said that this would be the bank's second location in York. She introduced the team working on the project. Architect Mike Lassell described the curb cut as the primary entrance, with the exit onto west side. He said the land contained an archeological site, the evidence of which must not be destroyed by buildings or trees. It will be fenced off with links-of-chain fencing and have a sign. He described the 5,500 square foot cape-style building with mezzanine, the exterior stone base and shingle siding, plus a 34-car parking lot. He described the traffic pattern, controlled by curved traffic islands. He explained 70% and 50% angle parking at Lee Corbin's request. Terrance Parker will be the landscape architect. Dave Marshall referred to \$200,000 "put up" by Hannaford in 1998 for specific Route 1 changes along its property line, asking if further work should wait until the changes are made. Steve Burns replied that that project was supposed to start before the end of the current month, so there was no need to wait. Tom Manzi described a "Texas village," where a person has to drive from one nearby store to another and asked if the bank property would be pedestrian friendly. Barrie Munro recommended the applicant visit Public Works and the Police Chief for assistance in the development of pedestrian amenities and safety features on the property.

The property line was discussed and shown on the plan. A portion of the leased lot might go back to Hannaford for future development. The west side, which has wetland, will not be developed. Lee Corbin brought up traffic patterns, which were then explained. Steve Burns said that there was an issue about keeping incoming drivers from turning in to the left (crossing traffic exiting Hannaford). Jay Lord, of Hannaford Brothers, said that he was looking at the problem, aware that Irving traffic exits across incoming Route 1 traffic at the same spot from the opposite side.

**Wild Willy's Restaurant/Jim Williams 765 US Route One Map 4/Lot 13A. Public Hearing. Application to amend the Route One Use Permit to add a deck for outdoor seating. Total approved seating to remain unchanged at 50 seats.**

Applicant/owner Jim Williams explained that he wished to extend the area outside the handicap ramp by another 48 sq feet. The use permit currently allows 50 seats at Wild Willy's, but he can only get 40 seats inside, so the deck expansion could provide the additional 10. He had spent \$60,000 on an excellent septic system, but it only uses one-third of its capacity with the crowd he now serves. The extra 10 seats will not tax the system, he said, the capacity of which will probably remain under 50 percent.

Chairman Barrie Munro opened the public hearing. No one came forward to speak, so the public hearing was then closed.

Town Planner Steve Burns read an email from abutter (York Woods) Gregory Gosselin dated October 13, 2004, who wrote that he was concerned about noise from the deck. He was also concerned about litter, such as napkins getting blown off the tables. Jim Williams responded that there is no raucous behavior at the restaurant, it is not open Sundays, there is no outdoor paging system, and it closes every evening at 8:00. Staff already picks up Route 1 debris from the property on a daily basis.

**Motion** Dave Marshall moved to accept the application as complete. Glen MacWilliams seconded the motion, which passed 5-0.

Steve Burns showed a plan of the building with non-Shoreland wetlands. The plan meets the setbacks, he said. The ratio for developable land and impervious area had not yet been calculated. The building design is not an issue. What Glenn Farrell had once called a glorified chicken hut had been spiffed up quite a bit. Prohibition of expansion does not apply because the use is not being expanded. Steve Burns added that Wild Willy's restaurants were being planned to open in Rochester, NH and Watertown, MA.

**Motion** Glenn Farrell moved to approve the application and Findings of Fact subject to CEO verification of the lot coverage ratio and erosion and sediment control. The motion passed, 5-0.

**White Pine Subdivision Amendment 3 & 5 Tall Pines Way. Map 94/Lots 16T & 16U. Public Hearing. Application to amend the shape and size of two lots in a cluster subdivision.**

Town Planner Steve Burns said the applicant wished to amend a subdivision that did not have certification in April, 2001. The Board had asked for a plan with certifications, but that had not been received. Applicant Ray Pape said that the plan has a surveying stamp, but not an engineering stamp. He had recently received an explanation from surveyor Bill Anderson, which he passed on to Steve Burns a week before this meeting. Steve Burns read that September 21, 2004, letter addressed to the Town of York. It said that no engineer is represented on the plan, and he, Bill Anderson, a surveyor, is restricted from signing it as an engineer. However, the letter continued, from the standpoint of the surveyor, the plan does conform. Steve Burns noted that the supplemental pages were surveyor-certified. Glen MacWilliams said that the engineering certification could be required. Dave Marshall said that every other page of the plan for the road was certified and signed throughout the submission. Glen MacWilliams replied that the plan meets and bounds, and it was not surveyed. Dave Marshall replied that that has too much technicality, and since it was stamped on every other page, the Planning Board should approve it.

**Motion** Glenn Farrell moved to approve the plan change and the accompanying Findings of Fact. Dave Marshall seconded the motion, which passed, 4-1, with Glen MacWilliams opposed.

**Sentry Inn at York Harbor LLC 2 Victoria Court. Map 57/Lot 79. Public Hearing. Application to add parking spaces.**

Steve Burns said that the building addition had already been approved. This application was about parking. Architect Mark Mueller said that Sentry Hill wished to add 14 parking places, some in the back for employees, with 8 parallel parking spaces along the main driveway. Sometimes semi trucks come in, when families move relatives in, and the edge of the road has to be moved to let those semis and fire trucks in.

Chairman Barrie Munro opened the public hearing, which he then closed, as no one came forward to speak.

**Motion** Glenn Farrell moved to approve the revised plan and Findings of Fact, as discussed. Glen MacWilliams seconded the motion.

As an abutter, David Marshall abstained from the vote. Lee Corbin was asked to vote in his place.

In discussion, Steve Burns said that the Fire Chief wanted certain conditions listed on the Mylar, which were handled in the following Amendment.

**Amendment** “Precedent conditions specified by the York Fire Chief will be added to the Mylar,” was added to language of the motion. Glenn Farrell and Glen MacWilliams agreed to attach the amendment to the motion.

**Vote** The motion passed, 5-0.

There was a 15-minute break.

**The Meadows at Highland Farm Subdivision 301 Cider Hill Road. Map 90Lots 29, 29A, 29B, 29C, 29D & 29E. Public Hearing. Application for Preliminary Review of a 13-lot subdivision to replace the existing approval for the Highland Farm Subdivision.**

This was the Planning Board’s third review of this Highland Farm application. Town Planner Steve Burns listed possible open space uses that stayed within the guidelines of the Comp Plan, including orchards, agriculture, farm activity, and tall grass for nesting birds. The no-cut forest area seen on the plan is not part of the open space, he explained. The applicant has gone beyond what is required in the standards. The letter of the law has been met for cluster standards. The design of the out-back acreage is not an issue. With cluster subdivisions with farmland, people should not be allowed to go traipsing through the farmland. He reminded the Board to make changes before the final hearings. He recommended preliminary approval.

Chairman Barrie Munro opened and then closed the public hearing. No one came forward to speak to the application.

Richard Smith asked if the dedicated farmland was previously called “open space.” Steve Burns showed the specified boundaries on the plan. The agreement between the Planning Office and the Applicant had been made over the size of the open space. Fifty percent of the good land should be open space, and the applicant has met it, though the applicant has not said that they agree to it, he said.

Richard Smith asked if Steve Burns had heard from the town attorney. Steve Burns replied that an agreement had been reached without the town attorney. Glenn Farrell summarized that the open space comprised of 18.2 acres in three dedicated areas, some of which, Lot 13, will be owned by an organization, though who that would be had not been decided. The balance of the open space will be dedicated farmland owned by the estate.

Applicant Attorney Peggy McGehee said that changes since the last meeting included two added conservation easements. One easement is Lot 13, consisting of meadows, a no cut zone, and trails, and is in the land located to the left of road. The other easement, Lot 14, on the right, will have a designation limited for agricultural purposes. Richard Smith asked if the dedicated farmland on Lot 14 might stay in a natural state. Peggy McGehee said she could make no promise that the land will always be something particular. You grew up on a farm, didn't you Mr. Smith? He nodded. You know how land needs to rotate its use, she said.

Glen MacWilliams brought up wildlife corridors. He said that the Board had hoped for contiguous wildlife blocks in this development and in the next phase, too. Richard Smith said that it was not right to put some of the 8.2 acres around the main house. It should go to the people in the subdivision and not be a trade off to protect Lot 14 (estate lot). He again asked that the town attorney determine the matter.

Steve Haight of Appledore Engineering said that 18 acres is one-half of the amount of buildable space. He said that, in fact, 35 out of 55 acres would be open space. Dave Marshall said that the legal opinion that was considered was over the location of the open space in the cluster portion of the property. He asked if the land around the estate house would be held in perpetuity. Steve Haight replied that it would, and that the open space land to the left of the road, Lot 13, would also be open in perpetuity. Barrie Munro asked if the 50-foot buffer required around the subdivision houses could be part of the open space. Steve Burns replied that that was not required, but acceptable. Barrie Munro said that the buffers had not been taken into account and that an easement to clarify the 50-foot buffer is required. Steve Burns said that that is a plan note point. Peggy McGehee went over the math she used for determining the open space (36 acres are net developable, and 9 acres is less than 50 percent of 36), adding that the applicant has met the intent.

Applicant/owner Steve Wood qualified himself as a capable and knowledgeable farmer, currently working his 100 acres in Dover, NH, with 15 animals and fields that receive 2 cuttings annually for a net of 4,000 bales of hay per year. He said that the Highland Farm would be good for equestrian or other animal husbandry. He knew of a cluster subdivi-

sion where a beautiful pumpkin field existed in the open space. Glenn Farrell said that eventually, the applicant would no longer own the open land. Instead, it would be designated to someone else as dedicated farmland. Peggy McGehee said that the open land could be used publicly or privately. But when there is agriculture, it should be private, so that people are not stepping on the seedlings.

Glen MacWilliams said that the quality of space had not been discussed. Where are the wildlife corridors, and how do they work? he asked. The location of the open space is fundamental. Some say that the corridors are where the houses are going to be. What is being offered is not the Agamenticus-to-the-Sea vision, that of the un-fragmented-block concept. Peggy McGehee answered that neither wildlife corridors nor the Agamenticus-to-the-Sea vision is part of the ordinance or the Comp Plan. Steve Burns commented that if Zoning 10B were in effect, there would not be this kind of ambiguous example of code.

Dave Marshall reminded the Board that for cluster plans, this one goes a long way. The land that won't get developed has been set aside. If there is something close to a corridor, it is on the right side of the estate lot. The York Land Trust or the Conservation Commission can oversee the land. Glenn Farrell agreed that it is a good plan. Wild animals can adapt to changed corridors. Terms of the easements have to be discussed, he said.

Richard Smith said that he was not sure of the numbers and still wanted to hear from a lawyer, regardless. The open space is for people who bought in to the cluster housing, he said. Barrie Munro said that the basic site plan is acceptable and the density calculations are also. Barrie Munro also reminded the applicant that it was the applicant's responsibility to obtain, to the satisfaction of the Planning Board, an institution or other corporate entity to be responsible in perpetuity for the maintenance and management of the specified open space and conservation easements.

**Motion** Glenn Farrell moved to approve the preliminary plan. Dave Marshall seconded the motion.

In discussion, Dave Marshall asked if the applicant might move Lots 8 and 9 to the right to open up that corridor. Steve Burns said that the building envelopes are where they need to be. Engineer Steve Haight said that the nearby wetlands forbid moving the lots. Planner Steve Burns reminded the Board that it had said that the layout was okay at the first meeting. All along, everybody had been saying that things were pretty good, he said. The applicant team has done what the codes and Comp Plan asks them to do. Dave Marshall asked if the plan could be changed because of the discontent of the Board. Engineer Steve Haight explained that things are controlled by the upland area and cannot be changed.

**Vote** The Chairman called the vote to approve the preliminary plan, which passed 3-2. Richard Smith and Glen MacWilliams were opposed.

Peggy McGehee asked if a workshop could be held to discuss easements. Steve Burns explained that the Board could not meet with the applicant, but that they can communicate ideas through Steve Burns. The language about open space and easement ownership is easy, he said, but the specifics of the homeowners association and the ownership of that space is not. The Highland Farms application hearing ended.

**Cape Neddick Village. 1132 & 1136 U.S. Route One. Map 22/Lots 13A and 13C.**  
**Public Hearing. Application for a Route One Use Permit to construct 22,000 square feet of commercial space, plus apartments.**

Chairman Barrie Munro stepped away from his seat, asking Co-chairman Dave Marshall to continue the meeting. Town Planner Steve Burns said that the Cape Neddick Village application was the best-prepared set of plans had ever seen since he has had this job (some 5 ½ years).

Applicant Seth Spiller had appeared before the Planning Board two months ago. The plan had changed from originally having four buildings to having three, as influenced by the Fire Chief. Since the last meeting, the requirements and restrictions caused by the intersection of multiple zones and overlays had simplified with the elimination of the limited residential zone, which was not where it was thought to be. There is now increased parking in the rear, creating a better traffic flow. Dave Marshall asked Steve Burns what the issues were, who replied that construction standards and a drainage review by the Town Engineer were the issues.

**Motion** Glenn Farrell and Dave Marshall moved and seconded to accept the application as complete for purposes of review.

In discussion, Glen MacWilliams asked about certification. Seth Spiller answered that there is no certification stamp yet. Dave Marshall answered that the certification does not have to be part of the review level and can be presented at a later stage. He explained that the stamps would have to be certified later.

**Vote** Co-chairman Dave Marshall called the vote to accept the application as complete, which passed 4-1. Glen MacWilliams was opposed.

The Co-chairman opened the public hearing. No one came forward, so he closed it again. Steve Burns said that before the next Cape Neddick Village hearing on November 4, there should be a site walk. A site walk was planned for Saturday, October 23, 2004 at 9:00. The applicant then handed out an addendum.

**Other Business/Adjourn.**

Dave Marshall continued to chair the meeting. Barrie Munro had returned. Glenn Farrell left toward the end of the following discussion.

Due to requirements established by the York Planning Board during the September 23, 2004), David Fredette, representing Paul Hollis of the Two Light Subdivision, came forward under Town Engineer John Treat's recommendation. He explained the need for a catch basin because curbing they had built was causing puddles, and pavement had to be cut out to solve the problem and install the basin. John Treat had asked Two Lights to stop work on the unplanned change and come before the Planning Board for permission to continue.

**Motion** Barrie Munro moved to approve the change of plan allowing for the necessary catch basin. Richard Smith seconded the motion.

In discussion, Glen MacWilliams asked if the approval had to be turned back to John Treat. Glenn Farrell said that there is no implied review.

**Vote** The motion passed, 4-1, with Glen MacWilliams opposed.

Steve Burns said that there was a second matter sent by John Treat involving structural steel at Eldridge, but Steve Burns would handle through CEO Mark Badger. No discussion or motion was made on that issue

A third situation came out of the Hickory Farms subdivision, where special conditions exist for Lot 7. Topsoil cannot be removed because of antique, unmarked graves in that area. The builder had hired a geologist who, using ground-penetrating radar, did not have reason to believe there was evidence of any kind of burial sites in that area. Though the area has proven to be devoid of graves, the note still requires that the topsoil not be moved.

**Motion** Glenn Farrell moved to accept the alternative method as satisfactory proof that there are not gravesites on Lot 7. Barrie Munro seconded the motion, which passed, 4-1. Glen MacWilliams opposed the motion.

**Motion** Richard Smith moved to continue the outstanding items at a different meeting. There was no second to the motion. There was no discussion.

Referring to the Two Lights catch basin matter, which was heard and voted upon a few minutes before, Dave Marshall asked if that was the type of change the Board had in mind when it initiated the policy in response to the Blue Star application, where the building on Route 1 turned out significantly differently than how the Board had approved it.

Barrie Munro said that he thought Town Engineer John Treat probably felt challenged by being involved the way he was now expected. What the Board recommended might not be feasible, and it might want to rescind what was set up. Steve Burns said that John Treat might be concerned that the Board's decisions about what is approvable might be getting shifted to John Treat. He has been doing the job since 1996 or 1997, longer than Steve Burns has been the Town Planner. In all the years they have worked together,

Steve Burns has never given John Treat any changes in how John Treat does his job—until two weeks ago with the memo about Board approval of substantive changes. Dave Marshall said that perhaps there should be a subcommittee handling the matter. Steve Burns said that perhaps a couple of Board members should go out there with John Treat in order for his understanding of the difference between field changes and substantive changes to sink in.

Glen MacWilliams said that the Blue Star building has parking requirements that have not been reviewed or changed. As the memo he read to the Board during the Public Input session at the very beginning of the meeting stated, the Board has not acted on the fact that the building was not built in accordance with the approved plans. Code Enforcement is a big part of that, more than John Treat is, Glen MacWilliams said. John Treat would say that the engineering change was right, and that Code Enforcement has the job to see that what has been built is how Planning Board required it. He added that he wants to find the Planning Board living up to the ordinances, but if the Planning Board has to make quick decisions, it would be pretty easy to make the wrong decisions.

Glenn Farrell suggested bringing John Treat in to talk to the Board. Lee Corbin said that the Board is there to implement and interpret, but when it comes to engineering, the Board members are lay people who cannot do John Treat's job. Tom Manzi asked why the Planning Board does not find the building in default by holding a show-cause hearing. Glen MacWilliams said that the applicant has to come back to the Board for a hearing over the changes. Barrie Munro said that John Treat followed procedure and in court, because of that, the Board would not be able to prove the building in default. The Board should ask Blue Star developer, Duane Jellison, to come in before the Planning Board with a proposal for a change of plan. Dave Marshall suggested having John Treat come to a meeting. Steve Burns said he would put it on the November 18 agenda. Barrie Munro said that the Board would like to invite Duane Jellison of Blue Star, or a representative, to bring a complete comparison of the building as built with the original plan to bring the Board up to date.

**Motion** Glen MacWilliams moved that the Board find that there have been changes that are not authorized by the Planning Board and that it ask the applicant to come in and seek approval for the changes that are in accordance with the ordinances and regulations. Barrie Munro seconded the motion.

Co-chairman, Dave Marshall asked Tom Manzi to vote for Glenn Farrell, who had left the meeting apparently because of the late hour.

**Vote** The motion passed, 5-0.

The meeting was adjourned. The time was 11:35