

**YORK PLANNING BOARD  
THURSDAY, JULY 26, 2001, 7:00 P.M.  
GRANT HOUSE, ROUTE ONE**

**MINUTES**

Present at the meeting were Al Bibb, Chairman, Barrie Munro, Dave Marshall, Glenn Farrell, and Torbert Macdonald, Jr. Representing staff was Town Planner, Steve Burns. Dick Arnold served as alternative. Patience Horton was the recording secretary.

Chairman Bibb called the meeting to order at 7:00 P.M. He introduced Board members and attending staff. Minutes of the June 28, 2001 meeting were reviewed and Mr. Munro motioned that they be accepted. Mr. Marshall seconded, and all voted in favor 5-0. Minutes of the July 12 meeting were reviewed. Mr. Bibb wanted them to show that in the last item of business, the applicant agreed to either put a culvert under or leave a swale next to Mr. Gough's driveway. Mr. Munro moved to accept this change. Mr. Marshall seconded. All approved, 5-0. Mr. Bibb then called for the annual election of a Chair and Vice Chair for the Planning Board Committee. Mr. Munro nominated Mr. Bibb as Chair and Mr. Farrell as Vice Chair. Everyone voted in favor.

Mr. Burns stated that the meeting would be held as a public hearing for 17 draft amendments that would bring Town standards closer to State requirements, clarify codes, and reduce administrative burden. Town Selectmen intended to hold a public hearing about these changes and other ordinances on August 22. At that time, five more amendments would be added. Mr. Bibb opened the public hearing at 7:10. **Amendments 1-4** were offered for discussion, to which there was no response.

**Amendment 5.** Mr. Bibb went to Ordinance Amendment 5. Cliff Estes stated that in 1993, the way of calculating 35' height was changed to average between peak and eaves, allowing 45 feet peak, or more. Note "n" in the Amendment reads that if you get to make that change, for every 2' above the 35', you have to have a setback. He said that if Note "n" is eliminated, the possibility of a setback should also be eliminated.

Lou Stowe, Chair of the Planning and Ordinance Committee stated that his group is reviewing the Village center, the Beach business area and York Harbor and decided to get data to find out what height variables exist, always encouraging existing businesses to maintain or expand. He felt that what was being proposed had merit.

Chairman Bibb said that going above 35" was not the intent of the original ordinance. Getting rid of the footnote is supposed to get rid of a loophole. Mr. Burns added that each addition 5' setback allowed more height. Getting rid of the footnote would get rid of the loophole.

**Amendment 6.** Michelle Moody said that the current process should be simplified. Applicants should review plans with a CEO, who could move it on or dissolve the application. Abutters could go to the officers, rather than Town Hall staff, allowing the burden of the CEOs to be lowered.

**Amendment 7.** Lou Stowe spoke against the elimination of the Shoreland/Wetland Committee, for which the need was increasing. Abutters have to be able to react. The wealth of information available at meetings was incomparable. He recommended the establishment of a committee of peers from centenary that would not impact other committees, which would be assisted by the expertise of CEOs. The applications were currently backlogged by a year. More and more issues involving the wetlands would come forward.

Ed Ciampa recognized the backlog, reaffirming that a tremendous amount of information becomes available at those meetings.

Vallana Pratt-Decker, Environmental Engineer/ Asst. Planner/Asst. CEO, stated that she had been chairing the Shoreland/Wetland meetings. Preparation time for and attendance at the meetings has been substantial. In June 43 people attended. In July 2 people attended, beside the applicant. The meetings had been constructive for dialogue, but the process used huge staff time. During fifty percent of their time, staff was dealing with the lobbying by the various parties who call or come in. Even when the code is clear, the pressure from applicants and abutters has been time consuming, because many people won't accept it when "no" is said. She is working on making a more complete abutter package to assist efficiency.

Stan Moody, current Chair of the Conservation Commission, stated he has been with the Shoreland Committee since its inception. Membership is supposed to rotate through the Conservation Commission and Planning Review Board. A problem is that applicants keep coming back, because of their poor planning. They have to read the codes, they have to meet the codes, and they do not meet the codes. The Shoreland Committee was formed to lighten the load on Planning Board. A first Code change took one-third of the work away from the Shoreland/Wetland Committee. Another code change, last November, should cut a second-third out, but since the backlog is a year long, the permits are being dealt with in compliance to the old, slower code. The work level will subside in the future. As for the incomplete applications coming in, Code and Planning can't put those together, the applicant must. He stressed that Section 18.2.3 needs particularly to be removed. In Section 18.2.5.2, he asked that permit issuance come from a CEO.

Mike Cuomo spoke in favor of Amendment 7, stating that the system is broken and needs to be fixed, without changing standards. He submitted an application in February 2001. It has not yet been reviewed for completeness. Of approximately 40 applications in line, around 7 have been reviewed since then. He believed his application to be complete, and that all incomplete applications should be removed from the list. With only one person scheduled for hearing at the July meeting, administrative problems with working with the load are symptomatic of the problem. He did not believe that formation of another subcommittee was going to solve the problem.

Dave Gross spoke next, agreeing with Mr. Cuomo. One year after submitting an application, his is No. 9 on the list, and that the Board has failed him. He asked that the process be sped up, or that the people holding up the process be eliminated, adding that the Board needs to make sure this issue goes on the Referendum.

Cliff Estes supported the retaining of the committee, indicating it would be a step backwards to give the work to the CEOs.

Paul Hazzard of 193 Birch Hill Road, a neighbor to Dave Gross, confirmed that Gross has been held up for a long time trying to build for his daughter, and that Gross has been "abused." The people who preserve the properties are the family landowners, he said. Developers and subdivisions do not protect wetlands. Diversity and vastness of codes is not good and does not help anybody.

Stan Moody, Conservation Commission, said that reviews used to be done by Code Enforcement alone. Then Planning began to handle it, so that more people could work on it. The CEO office couldn't handle it alone 7 or 8 years ago. The Code and Planning Office needs more people and more money. Doing away with the Shoreland/Wetland Committee isn't going to "do it."

Ms. Pratt-Decker said that in June and July 9 applications were processed. Five new have come in to her office in the last few weeks. A review of completeness of those five at counter

showed that two didn't even have plot plans. At monthly meetings, Steve Burns, Mark Badger, and she have been going through efficiency steps while updating applications, thus allowing people to roll up the list. There have been several complicated applications in the last two months. She appreciated the frustrations of the applicants. Steve Burns had recently made the Shoreland/Wetland Committee her top priority.

Mr. Bibb postponed ended discussion for a later time in the meeting.

**Amendment 8** was not ready for discussion.

**Amendments 9, 10, 11, 12, 13, and 14** were offered for discussion. No one wished to speak to those.

**Amendment 15.** Cliff Estes raised the issue of "optional inspections," about which Mr. Burns explained that essential inspections would not be optional. Mr. Estes submitted remarks in writing to the Chair on another issue. Stan Moody, said that people might think that if they're not being inspected, they will be doing shoddy work. He asked for "stronger words" in the amendment, warning of builders' responsibility to re-build.

**Amendments 16 and 17** were offered for discussion, but were not addressed.

**Amendment 18.** Ms. Moody pointed out the potential for confusion in Table A of Article 8.3.9.4 (b.) wherein certain numbers (15, 20, 25, 30, and 35") were repeated in two categories on the Distances chart, whereby the terms "less than or equal to" would clarify the regulations. Asking to go back to **Amendment 12**, she stated that construction had begun recently on subdivisions where signatures were on the Mylars but that pre-construction permits from Planning had not been issued. Both developers didn't know they had to do that. Nor were they aware of pre-construction meetings that had to be attended.

Mr. Bibb directed the Planning Board to vote on several of the proposed Draft Amendments to the Comprehensive Plan, Zoning Ordinance, and Other Ordinances to be considered at the 2001 General Referendum.

**Amendments 1-4.** There were no objections to these amendments. Mr. Munro made the motion to present these amendments to the Selectmen, and Mr. Marshall seconded the motion. All voted in favor (5-0).

On **Amendment 5**, there were no objections, nor discussion. Mr. Marshall made the motion to present this amendment to the Selectmen, and Mr. Farrell seconded the motion. All voted in favor (5-0).

On **Amendment 6**, there were no objections, nor discussion. Mr. Farrell made the motion to present this amendment to the Selectmen, and Mr. MacDonald seconded the motion. All voted in favor (5-0).

Mr. Bibb announced that the vote **Amendment 7** would occur later in the meeting. He also said that **Amendment 8** was not complete, and that there would be no vote on it.

On **Amendment 9**, there were no objections, nor discussion. Mr. Farrell made the motion to present this amendment to the Selectmen, and Mr. Munro seconded the motion. All voted in favor (5-0).

Mr. Bibb raised **Amendment 10** (Zoning Ordinance and Noise Ordinance). Mr. Burns read from the July 24, 2001 memo from Superintendent of Public Works, Marvin Swain, which stated that roadwork and other projects should be able to go outside the ordinance, referring to work by night crews, and that the motion should be changed allowing the waterline, sewer

line, and snowplow to crews to utilize “exception when necessary.” Discussion followed. Mr. Munro suggesting checking language from other towns. Mr. Marshall asked for more time before deciding. Mr. MacDonald suggested that all activities on behalf of the Superintendent of Public Works be exempted, and that notification,” would be left to the discretion of Marvin Swain.

Mr. Bibb asked for a vote to amend the proposed Amendment 10 and add the provisions that Mr. Swain had in his letter, exempting Town, Water, and Sewer from the ordinance, with Marvin Swain as the arbitrator. The motion was raised and seconded to forward the amendment to the Board of Selectmen. All voted in favor (5-0).

**Amendment 11** (Zoning Ordinance and Overboard Discharge Ordinance). Mr. Munro and Mr. Macdonald stated they were opposed to the Town’s turning of responsibilities of overboard discharge systems over to the State. Ms. Pratt-Decker said that the State does not take the same samples the Town would as part of the compliance. There are five such systems on the York River. One, the Foster property, is owned by a 94-year-old woman who can hardly get to her mailbox, let alone keep up with the chlorination process. Property owners are supposed to keep up with their systems every two weeks. Mr. Macdonald recognized the overburdened Town staff’s difficulties in making the inspections. He said these discharge systems would be phased out, that the Town can’t do it, but the State can. Mr. Munro asked if local systems are brought to State standards. He asked if the State would inspect two times annually. Mr. Farrell said that the change in the ordinance was necessary because the Town never enforced it. Mr. Macdonald objected to the elimination of an ordinance because it was never enforced. Mr. Burns said that the ordinance was being eliminated because the State does the inspections, not because the Town didn’t enforce it. Mr. Macdonald said he wanted to keep the Overboard Discharge Ordinance intact until the public could come forward to enforce it. He said that since they are York waters, and it is relevant to public health and safety, “we have to do it.”

Mr. Bibb moved to pass the amendment on, as written, to the Selectmen. The motion was passed, 3-2, with Mr. Macdonald and Mr. Munro opposed.

**Amendment 12.** Mr. Macdonald felt that it was not a responsible move to give up the modifications recommended in the amendment. As comparison, he and Mr. Burns discussed the lack of prior site approval at the Elementary School. Mr. Farrell moved to vote on sending the amendment to the Town Selectmen, which Mr. Bibb seconded. The motion passed (4-1), with Mr. Macdonald’s opposing vote.

**Amendment 13.** There were no objections, nor discussion. Mr. Farrell made the motion to present this amendment to the Selectmen, and Mr. Marshall seconded it. All voted in favor (5-0).

**Amendment 14** (regarding permit fees). Mr. Macdonald asked if raising the fee by \$1 per \$1,000 was an adequate amount of money. Mr. Burns replied, “This is a good place to start,” and that they would find out in time, raising it again, if necessary. The motion to present the amendment to the Selectmen was passed (5-0).

**Amendment 15.** Mr. Macdonald questioned vague language in the use of words “mandatory” and “discretionary”. Mr. Munro said that some inspections are State mandated and not waiveable. Optional ones could be under the discretion of the Code Enforcement Officer, who is under the supervision of the Town Planner. The motion was passed (5-0).

On **Amendment 16**, Street Address Ordinance and E911 Ordinance, there was light discussion about changing violation fines to \$100. There was no objection to this amendment. Mr. Farrell made the motion to present this amendment to the selectmen, and Mr. Marshall seconded the motion. All voted in favor (5-0)

In **Amendment 17**, Mr. Macdonald objected to the elimination of language surrounding the Planning Board's State-given powers. Mr. Burns replied that the matter was already covered in the Town Charter, making State's establishment of the Board superfluous and redundant. Mr. Macdonald said he was not opposed to the decision, but wanted appropriate legal consultation before eliminating the language. Mr. Burns replied that there would be a full legal review of the proposed document before changes would be made. Mr. Marshall made the motion to present the amendment to the Selectmen, and Mr. Farrell seconded the motion. The motion was passed (4-1), with Mr. Macdonald opposed.

**Amendment 18** (tightening septic system requirements) Mr. Burns stated that the "less than 15 inches" depth factor needed to be clarified. Mr. Farrell said that there was need for elimination of ambiguity about the year in which structures were made. Mr. Macdonald raised discussion about unbuildable lots, "taking," and spot zoning. Mr. Burns replied that this is performance zoning, not spot zoning. Mr. Macdonald objected, saying there was not possibility of a technical fix. Mr. Munro moved to present the amendment to the Selectmen, and Mr. Marshall seconded the motion, which passed (4-1) with Mr. Macdonald's objection.

Chairman Bibb directed the meeting back to **Amendment 7**, stating that the problems with the Shoreland/Wetland Committee stemmed in its fluctuating membership. He proposed that the Chairman of the Planning Board and Chairman of the Conservation Commission, plus a representative from the Code Office meet not more than once monthly to review completed applications and decide if they should go to the Code Office, to the Shoreland/Wetland Committee or to the Planning Board. Chairman Bibb cited the Shoreland/Wetland change of personnel as a major problem. Those members should be appointed for 6 months for continuity and better due process. Mr. Macdonald said that this was a reasonable approach and preserved the integrity of the system. Also, a checklist should be given out with the complete requirements. Every completed application should be treated within a 30-day period, he continued, established by State law. Taking extra meetings to clean up backlog should be done, if necessary. Mr. Farrell said that in that case, a modified notice could be sent to abutters, inviting that their input to be sent to the CEO (in writing). Mr. Burns said that the CEO's preparation of the documentation holds things up, taking preparation time and meeting time. As work gets divided up between different committees, it will appear to be arbitrary. That's why he wants to get rid of the committee. Looking at the cost, Mr. Farrell said there would be no savings. Mr. Bibb thought time could be saved if the faster applications could be "bumped" above the slow ones. Mr. Burns said he wanted to divide the responsibilities of the reviews so that he supervises planning reviews and Ms. Pratt-Decker reviews the Shoreland/Wetland reviews.

Ms. Pratt-Decker suggested that the Planning Board give one hour out of every twice-monthly meeting to the Shoreland/Wetland issues. At that time, she would present 6-10 applications, saying which are simple and which are complicated. She would label them "approved," or "approved with revisions," indicating the level of attention the applicants need. Then the Board could decide how things would be allocated. Mr. Burns said that having staff personnel as members of the committee complicates the matter, that their dual function is problematic. "If you are going to keep the committee, don't let the staff member vote." Mr. Macdonald moved to table the discussion, stating that removing the committee would not cure the problem. He said that working it out administratively would get it out of the backlog. Mr. Munro seconded Mr. Macdonald's motion to table the discussion. The motion was passed (3-2) with Mr. Marshall and Mr. Farrell opposing.

**BRIXHAM GRANGE DISCUSSION** (modification of parking and landscaping). Chairman Bibb directed the discussion to the matter of the proposed change in landscaping at the Brixham Grange. Mr. Arnold stated that the moving of the fence, playground, and trees would not affect the historic character of the building. Mr. Macdonald proposed that the changes be allowed. Mr. Munro seconded the motion, and all voted in favor (5-0).

In **OTHER BUSINESS**, Lou Stowe updated the activities of the Planning and Ordinance Committee. His group has been going through the individual neighborhoods, York Village, York Harbor, and York Beach focusing on and "selling" different ordinance matters, of which 10 out of 15 articles are complete. On August 21, a special meeting for seasonal residents would be held. During September and October, they planned to visit different residential districts. The following meeting was slated for August 16 at Village Elementary.

In **New Business**, Chairman Bibb opened discussion about employee housing as an Accessory Use, referring to materials supplied by Mr. Macdonald. Dormitory-style, transient rental housing for transient workers is available at the Cliff House for over 100 years, but no other hotel can grandfather the practice in. He suggested that the Planning Board should come up with standards for the future, as they are not set in current ordinances. Mr. Macdonald stated that the operations in York need to be reported to the State Dept. of Labor. He stated that the people in those substandard conditions were aliens, and mentioned Green Cards. Mr. Farrell referred to an April 11, 2001 memo from Jackie Cormier, a former Asst. CEO, which implied that housing of that type was permissible. Mr. Munro made a motion to request of the Town Planner assessment of the situation and to make recommendations with respect to specific standards for housing seasonal workers, which was passed (5-0).

Mr. Burns announced that the joint meeting with the Planning and Ordinance Committee would be held August 2, 2001, and that the Open Space Committee would meet September 4, 2001, with a presentation of the Natural Resources Inventory

Mr. Munro moved to adjourn the meeting, which Mr. Macdonald seconded. Chairman Bibb closed the meeting at 11:20 P.M.