

York Planning Board
Thursday, February 25, 2010, 7:00 P.M.
York Senior Center

Call to Order, Determination of Presence of Quorum

This meeting took place at the Senior Center on the night of the powerful wind and rainstorm that tore down trees and damaged buildings. Winds were into the 90s. The meeting ended when the power failed.

Planning Board Chairman Tom Manzi determined the presence of a quorum. Tom Manzi, Todd Frederick, Lew Stowe, Torbert Macdonald, and Tom Prince were present. Dave Woods was absent. Town Planner Christine Grimando represented the Planning Staff. Community Development Director Steve Burns and Code Enforcement/Shoreland Resource Officer Ben MacDougal made presentations. This Workshop lasted three and-a-half hours and was recorded on video-cam. Patience Horton took Minutes.

Tom Manzi explained to the planning board that, under the advice of Christine Grimando and Steve Burns, he would disclose a possible *ex parte* error he might have made during a discussion with the Chairman of the Board of Selectmen, Mike Estes. Christine Grimando then advised Tom Manzi not to discuss the subject application, the Gables at Eastern Point, during this disclosure, as it was not on the agenda. Tom Manzi said he would only speak of his conversation with the selectman and there would be no discussion.

On Wednesday, February 17, 2010, Tom Manzi had an infection in his swollen hand and went to the ER. He was treated and went home. The next morning, the Chairman of the Board of Selectmen, Mike Estes, called Tom Manzi at home. Tom Manzi said he was napping on the couch and recovering with his hand. Mike Estes said three individuals related to the Gables at Eastern Point application, heard February 11, 2010, had called. He wouldn't identify them. They complained about the sketch plan hearing for that application over which Tom Manzi had presided as Chairman of the Planning Board on February 11. The complaints were about Tom Manzi's opinions and productivity of the board.

During the discussion with Mike Estes, Tom Manzi explained it had been a voluntary sketch review. Mike Estes said that he wants the derelict building, Harbor Home, replaced. Tom Manzi said that all the members of the planning board gave their opinions. There were no votes or motions that night. They talked about viable financing and capacity. The applicant representative listed intended customers. Demographics, and the other issues came up. The applicant's attorney joked he'd even sell these condos to "you empty nesters on the board, if your 401Ks increase in value." Tom Manzi said that they indicated that Mike Estes said, "Mr. So-and-So has very deep pockets and enough money to buy and sell both of us, and, many times over, what do you object about condos that sell for \$1.2 million?" Mike Estes said that they complained that the meeting was not productive. That is the gist of the conversation that is considered *ex parte*, Tom Manzi said.

The next day, February 18, Tom Manzi told the Board of Selectman chairman to take the complaints to Town Planner, Christine Grimando, as is proper procedure for formalizing citizen commentary. Two days later, Tom Manzi said, he went to the ER again, and on the way back stopped at Mike Estes's office. Tom Manzi apologized to Mike Estes for responding the way he did the day before. He was not feeling well, and should not have responded at all about the application. Tom Manzi said he realizing that it was possibly *ex parte* error. He told Mikes Estes that he would not respond to any of these issues Mike Estes continued to repeat the issues. The conversation stopped and went to other policy matters.

The selectman said he would review the "tape" that recorded the meeting. It happens that technical difficulties the night of Gables at Eastern Point hearing, kept the meeting from being recorded, though there is a possibility that a VHS copy was made by a viewer.

Emails were exchanged. On February 21, 2010, Tom Manzi wrote a letter than encapsulated the two conversations. He still does not know who made the complaints. He was then finished with disclosing everything he could remember about his conversations with the Selectman Chair.

Mike Estes reviewed the email, Mike Estes's response to that email, and Tom Manzi's response to that email. He said that people are questioning what Tom Manzi did that was not productive and me might ask the complaining parties to form a formal complaint against him for the Board of Selectmen to handle. Torbert Macdonald read the email correspondence in question into the record. Based on that correspondence and a letter received back from him, Torbert Macdonald said, "It is not you, Tom, who forced the *ex parte* situation. After years on the Planning Board, the School Board, and the Board of Selectmen, the Selectman should have known better."

Tom Manzi said, if the applicant attorney wants to challenge his objectivity this based on this *ex parte*, and if they want recusal, they should make that point to the Planning Board. "I am open to recusal." After further discussion, the board decided to pass the correspondence between Tom Manzi and the selectman to the applicant, Gables at Eastern Point.

Public Input

Open to the public to address any issue.

There were no members of the public at the meeting

Field Changes

There were no field changes

Minutes

Review and approval of minutes

Members of the board made revisions to the minutes of February 11, 2010, and gave them to the secretary for correction.

Motion: Lew Stowe moved approve the January 11 minutes as amended. Todd Frederick seconded the motion, which passed, 3-0.

New Business

Town Planner Christine Grimando conducted the following preview of the ordinance amendments for the November, 2010, referendum. She had handed out packets that included some of the drafts.

Ben MacDougal brought forward **Wetland Mitigation**. This policy will allow more wetland disturbance than zoning currently allowed. The functions and values of disturbed wetland can be reproduced through mitigation and compensation. Wetlands can be recreated. One was successfully relocated on the Stonewall Kitchen property. That is a properly functioning wetland that is filtering water, creating a habitat for animals, and providing healthy wetland plants. Before, it was upland. Ben said he has been documenting wetland mitigation, and he will be taking information from those studies and bring that into this project.

Torbert Macdonald said the amendment came at Mike Estes's request. Torbert Macdonald said he does not believe there will be no loss of ecological function in relocating these wetlands. If they are destroyed in one part of town and replaced in another part of town, are they in balance? He plans to bring experts from the Maine Audubon Society and the Wells Reserve for a planning board workshop on wetland mitigation.

York uses the New Hampshire Method in regulating wetland resources, said Natural Resources Officer Ben MacDougal. It rates wetlands with regard to each other and does not rate the absolute value of the wetlands. But there are more methodologies, like the Highway Methodology of the Army Corps of Engineers, that are equally viable and we might want to use. Steve Burns said the wetland mitigation can be handled as a Comp Plan amendment, instead of a zoning change. Next month, there will be a presentation about how that might come about.

Tom Prince said he wants whatever the Maine DEP recommends, what has worked elsewhere. Todd Frederick said EPA and the Army Corps set the standards.

Chemical Use in the Shoreland Zone

This amendment requires permits and performance standards for the application of fertilizers, pesticides, and herbicides in the Shoreland Zone. A permit would be required for using these chemicals within 75 feet of the shoreland resource. The amount applied, who applies it, and the saturation into the soil would be an integral part of the permit. Ben MacDougal said this approach is intended to be educational.

Torbert Macdonald proposed a different approach. He said a more productive way to water quality is to mandate that the licensed state applicators draw the pesticide and herbicide permits. He said in order to apply these things, you would have to be a licensed applicator. The applicator would pull the permit, not the homeowners, and come to the

Code Office in Town Hall to do so. Pesticides and herbicides should not be applied in the resource protection zone. Part of this is to tell people in the shoreland that they can't treat their own lawn without the proper guidance.

Christine Grimando said the licensing of pesticide and herbicide professionals will be difficult to enforce as this is already done by the state. Part of the amendment is intended to educate the public not to put chemicals there. Todd Frederick asked if, according to the proposal, an owner could apply herbicides or bug spray, and pesticides without an application. Ben said a stricter ordinance with bans like that would be less effective, overall. Todd Frederick said the Town sets a good example with organic products. Torbert Macdonald described a conversation with Patten White, former chairman of the Maine Lobsterman's Association, who said the pesticides drain into the ocean and kill underwater arthropods, lobsters.

Tom Prince wondered if the Town of York is the only town in the State that does this. What are the guidelines? Are we crafting an ordinance that is based on State recommendations? Some fertilizers are good, and some are bad.

Dock Policies

Ben MacDougal said that depending on information from a study being conducted by the Wells Reserve, we may propose changes to the dock rules between Sewell's Bridge and Rice's Bridge, which might require Comp Plan changes. Currently, between those two bridges, the permitted distance to the low water mark drops from 84 to 50 feet, and with the current ordinance, a dock cannot be installed with a distance less than 50 feet to the low water mark. The Harbor Board is dealing with the ordinance and the Planning Board is crafting the policy.

Zoning Harbor Definitions

This ordinance amendment changes the definition of "pier" and "moored float" in order to be consistent with the Harbor ordinance. This has been prepared because someone "danced" around with the current definition, and there is a court case resulting from that unclear definition. We want to make sure the zoning ordinance is aligned with the Harbor ordinance. Torbert Macdonald said, when you change definitions, there has to be a performance standard for a float.

Improvements to the Format of the Zoning Ordinance

Steve Burns said this amendment will allow reorganization of use and dimension controls to make the code easier to use and understand. It will be user-friendlier and will completely exclude footnotes. Everything will be sorted by zone, not use of dimension. The focus will be on format changes and not policy changes. RES-1A, for example, will be two pages long, instead of 20 pages. He explained how the footnotes will be integrated into the text.

All the information for any particular lot is going to be in one paragraph, one place. The format will have a master list of permitted uses in one, short section. Such different uses as B & Bs dwellings and manufactured housing will be together in one place. They are

currently organized by different zones. Any footnote is integrated right into the page. All the provisions are listed in two pages.

Design Standard f for York Beach

The Comp Plan places York Beach Village Center as the top priority future land use area. When the YB Village Center zone was created, the repeated concern was that large-scale development could occur, if there were no regulations of aesthetics.

The Renaissance Committee had worked on an earlier version of the Standards. They needed illustrations to push them along. TIF funds were allocated to hire illustrations by Lachman Architects & Planners. The illustrations have not been integrated with the text yet.

There are provisions for solar panels on roofs. New England style, cottage style and a number of other architectural styles are being encouraged. Contemporary style might fit in.

Rural Character

Zoning provisions can increase the economic viability of agriculture in York, while keeping, as the Comp Plan directs, support of agriculture in York. Local farmer, Tom Blaisdell has come to Planning because there is a group interested in keeping the rural character of farms. Farm stands selling flowers, fruit, and vegetables, ice cream stands and horse stables, farm services repairing equipment, low impact recreational camping or kayak-launching areas could all be components of industry of rural character. Tom Blaisdell's position is that current zoning makes farms open only to farming. Farm enterprises should occur where farms exist.

Torbert Macdonald suggested allowing farm enterprise wherever farms exist, by making each farm its own overlay district. This will prevent opening residential neighborhoods to an influx of commercial activity.

Sentry Hill

This ordinance amendment responds to a letter the planning board had received from a Sentry Hill resident who had lived with her aged mother, until her mother moved out. The daughter, with a disability, had not yet turned 55. Per zoning, Elderly Congregate Housing disallows pre-seniors to reside there. Christine Grimando suggested redefining Elderly Congregate House to accept handicapped people, as in this case. This would not encompass Elderly Housing, which tends to be government regulated. Steve Burns said this case was solved without eviction by offering this woman a generous enough period of time not only to remedy her situation, but to also turn 55.

Boat Building in the Shoreland Zone

Article 8 of Shoreland Zoning regulates boat-building shops for small boats. The shops can be located downstream from Sewell's Bridge. This is traditional industry. The question behind this ordinance amendment is if you are in another shoreland zone in another part of town, should you be able to build a boat? A boat shop on the York River is not

that viable. Torbert Macdonald asked if it could be a home occupation. Christine Grimando said, because of performance standards, home occupations would not be allowed in the shoreland zone.

Workforce Housing

Town Planner Christine Grimando said she is investigating workforce house. York Housing Authority should not be the only entity that can do this. This ordinance amendment proposes an Affordable Housing Overlay District. Torbert Macdonald said it can't be done without subsidy. Christine Grimando she would look into the language around public/private partnership.

Medical Marijuana

Maine expanded use of medical marijuana, but there is no legal way to get it. A person is permitted to have it, but how can that person get it? Is it to be distributed in dispensaries? Would a valid registry identification card be necessary? There should be a committee on the implementation of the Maine Medical Marijuana Act. Where in York should that be allowed? Use, locations allowed, an outline of the local permitted processed has to be approached.

Revisiting Formula Restaurants

This ordinance would modify the formula restaurant ban to selectively allow formula restaurants. Presently formula and fast food restaurants are "no go" in all zones. If some are allowed in, then where, what, and how?

The ban on fast food was on based on disallowing drive-up windows. Some chains started in York, like Wild Willy's and Stonewall Kitchen. If we do let some in, do we need more tools in place to determine how they will fit into the character of the community? There has to be a differentiation between Wild Willey's and Burger King. Maybe we should look at the maximum number in the chain to decide if we can stop them.

Formula Business and Franchises

Without losing character, York needs franchises to support good physical and visual character, as we support a strong economy here. The best part of town has to be identified as the most acceptable. Acceptance of formula businesses will alter the commercial boundaries in York Village. Christine Grimando projected a map image of York Village that illustrates how some opposing sides of the street not have matching zoning. The different York Village zones should interlink. It is not logical, she said, to have a business zone pieced together with gaps.

Sign Standards

Revisions to Zoning Article 16 would address temporary events, like auctions, for which banners world be used.

Site Plans & Subdivision Regulations

Site Plans and Subdivision Regulations would separate into two documents.

Changes to Minor/Major Subdivision Thresholds and Process

Steve Burns began to discuss reviews. The lights went out and the alarm sounded, because the night had turned into a severe rain and windstorm. The site walk was postponed.

Old Business

These two agenda items were not covered:

Findings of Fact for Gazebo School

Mylars/Findings for Viewpoint

The meeting closed before all items were complete at 10:30.