

**TOWN OF YORK PLANNING BOARD**  
**THURSDAY, JUNE 23, 2005, 7:00 PM**  
**YORK PUBLIC LIBRARY**

Chairman Barrie Munro began the workshop meeting at 7:00. Glenn Farrell, Barrie Munro, Richard Smith, Glen MacWilliams, and alternates Lee Corbin and Michelle Moody attended. Tom Manzi was absent. Barrie Munro asked Lee Corbin to vote in Tom Manzi's place. Town Planner Steve Burns represented staff. Patience Horton took minutes. The meeting was televised. The Chairman began the meeting by introducing the board and the staff.

**Public Input Open to the public to address any issue other than issues scheduled for public hearings on the agenda.**

Michael Dow came forward and asked about the order of the meeting. Barrie Munro explained the anticipated timetable and said that he hoped the meeting portion would end at about 10:15. No one else came forward. Public Input was closed.

**Business**

**Public hearing—Site Plan & Subdivision Regulations. Conduct a public hearing, to be limited to not more than 30 minutes during the meeting, on proposed amendments to the Site Plan & Subdivision Regulations (draft document dated June 9, 2005). If additional time or amendments are required, the Board may continue the public hearing to a subsequent meeting. The Board may act on any of the amendments upon conclusion of the public hearing.**

Steve Burns had handed out a copy of **Proposed Amendments to the Site Plan & Subdivision Regulations**, dated June 9, 2005, containing the following items.

1. **Eliminate contents of Article 4 as currently written because its two sections don't make sense as a stand-alone article**
2. **Site visits**
3. **Address Ex Parte Communications**
4. **Set submittal deadlines for supplemental information**
5. **Toughen up the historic/archaeological standards**
6. **Alter the fee schedule**
7. **Expand the completeness requirements to include information about overlay zoning districts**
8. **Update all the statutory references in the regulation**
9. **Add performance standards to address each of the criteria of approval of §1.2**
10. **Submittal Standards**
11. **Approval required prior to site work Number of submittals required**
12. **Wildlife Habitat Protection**

The Public Hearing was opened and closed. No one came forward to speak.

- Item 1, Eliminate Contents of Article 4. There was no board discussion.
- Item 2, Site Visits. There was no board discussion.
- Item 3, Ex Parte Communications. There was no board discussion.
- Item 4, Submittal Deadlines. There was no board discussion.
- In Item 5, Archeological Standards, Michelle Moody requested editorial changes to make the writing more clear. Glen MacWilliams pointed out that the paragraph numbering was not correct.
- Item 6, Fee Schedule. There was no board discussion.
- In Item 7, Completeness Requirements for Overlay Zoning Districts, Steve Burns said that all the zones have to be accounted for in applications. There was no further discussion.
- In Item 8, Updated Statutory References, Steve Burns commented the changed regulation would mirror State statutes.
- In Item 9, Performance Standards, Michelle Moody recommended language changes in 7.2.4.
- In Item 10, Submittal Standards, Steve Burns explained what is allowable in the ordinances regarding certification by either Architects or Professional Engineers. Glen MacWilliams and Glenn Farrell expressed different interpretations of the law. Michelle Moody suggested inserting “as permitted by State law” into the language, which Lee Corbin agreed was the way to clear it up.
- In Item 11, Approval Required Prior to Site Work, Glenn Farrell asked if trees could be cut prior to permit issuance. Steve Burns answered that the code has no bearing before the applicant applies.
- Item 12, Number of Submittals Required. There was no discussion.
- Item 13, Wildlife Habitat Protection. There was no discussion.

**Motion** Glenn Farrell moved to approve the Amendments to the Site Plan and Subdivision Regulations as discussed. Glen MacWilliams seconded the motion. The motion passed, 5-0.

**2. The Ordinance Amendments. This is the Planning Board’s first public hearing on proposed amendments to the Zoning Ordinance, as follows:**

1. **Zoning Ordinance--Home Occupations**
2. **Zoning Ordinance--Cluster Subdivisions**
3. **Zoning Ordinance—Affordable Housing Standard for Cluster Subdivisions**
4. **Zoning Ordinance--Wetlands Protection Incentive for Cluster Subdivisions**
5. **Zoning Ordinance--Route One Building Design Standards**
6. **Zoning Ordinance--Increase Buffers for Elderly Congregate Housing**
7. **Zoning Ordinance--Change Boundaries of the BUS-3 Zone in York Beach**
8. **Zoning Ordinance--Alter Regulation of Condominium Conversions**
9. **Zoning Ordinance--Traffic Impact Mitigation on Town Roads (deleted)**
10. **Zoning Ordinance--York River Watershed Overlay District**

11. **Zoning Ordinance--Historic Landmark Designation of Mt. Agamenticus Summit (Deleted)**
12. **Zoning Ordinance--Historic Landmark Designation of Grant House**
13. **Zoning Ordinance--Bus-as-a-Structure Issue**
14. **Zoning Ordinance--Reduce Permitted Uses in the GEN Zones**
15. **Zoning Ordinance--Septic System Setbacks in the Shoreland Overlay District**
16. **Zoning Ordinance--Amend the Shoreland Overlay District Boundaries and Map**
17. **Zoning Ordinance--Structure Expansion Limits in the Shoreland Overlay**

**1) Home Occupations.** The Chairman opened the Public Hearing on Home Occupations. Brian McGann spoke about the boat building school he hopes to create in his barn in the Maritime Zone. He said that the Home Occupation guidelines do not allow a large enough structure for boat building in that zone.

Michael Dow asked about fees for home occupations. Town Planner Steve Burns said that the fees cover costs that the taxpayers should not have to pay. The fees are described in the Comp Plan. Michael Dow replied that the fees are high. Steve Burns said that the fees do not begin to cover the Town's costs.

The Chairman closed the Public Hearing. Michelle Moody referred to §7.4.4.d. Home Occupations occurring at residences of 4-or-more acres should be able to upgrade in single increments from Class 2 to Class 3, but it should not be possible to upgrade two steps, from Class 1 to Class 3. Subsequently, Class 1 could go to Class 2. The board discussed agreed with the idea.

Michelle Moody also proposed describing bed-and-breakfasts as a home- or residential-enterprise, not a family-enterprise. After discussion, Barrie Munro stated that it did not need to be changed.

## **2) Cluster Subdivision**

Peggy McGehee spoke about Open Space Standards. She suggested adding a standard about proper configuration. She cited a court case from Scarborough to illustrate her point. She also spoke about Public Access to Open Space and said that, if the board wants developers to opt for cluster design, the developers would have to know how much access there has to be. She suggested that the extent of the public access should be determined during the sketch plan phase, so the developers can decide early whether the public access will be worth it to them. Steve Burns said that the sketch phase is non-binding, suggesting it be determined during the preliminary phase, instead. Peggy McGehee also asked for a general provision about waivers. She was also concerned about how 50-foot buffers might disallow the connectivity of roads going through open space between lots.

Helen Weinbaum commented that the Proposed Ordinance for Cluster Subdivisions was an improvement over the old ordinance. She asked why the Planning Board should have

to design the open space. The applicant should have to do it, as instructed, and the board should not have to do it. Also, the conveyance transfer of open space should occur as a planned sequence of events at an appropriate time. She said that public access should be defined more as traditional public access. She qualified herself as former Exeter Planning Board member who brought the first of many subsequent successful cluster subdivisions to Exeter, 25 years ago.

The Chairman closed the Public Hearing. The board discussed the use of the word “traditional.” Lee Corbin said she thought that it would lock applicants into a certain type of access, and that for flexibility, to leave the language the way it is.

**3. Affordable Housing.** The Public Hearing was opened and closed. No one came forward. Michelle Moody said that two-bedroom homes would be more affordable than three-bedroom homes for starter homes, work housing, or senior housing, and that three bedrooms would put residences into a higher bracket. The board agreed with this.

Steve Burns said that there is currently only senior housing in York. Glen MacWilliams wanted to make sure that a bias is not being established against family housing. Glenn Farrell asked if growth permits would be required for affordable housing. Michelle Moody answered that that will be so, until the growth ordinance is changed.

Walter Woods asked to speak. He said that affordable housing should not only be exempt from the growth ordinance, but also from the impact fee. Barrie Munro thought that was a good idea, and he asked that it be included in the amendment.

#### **4. Wetlands Protection Incentive for Cluster Subdivisions**

Steve Burns described the incentive of owning enough wetland to create credit toward building an extra unit on property outside of the wetland.

The Chairman opened the Public Hearing. Stan Moody, a resident of Cape Neddick, said that it was a good idea that should be “sweetened” to encourage it.

Walter Woods said that the idea would not motivate him as a developer. The value that the board is trying to convey, 25%, (four credits to one unit) is too small. Michelle Moody suggested “sweetening” the deal to 50%. Barrie Munro agreed it might be good to change the ratio.

Steve Burns suggested changing the word “unbuildable” to “where building is impractical.” Glen MacWilliams said that the amendment was fine the way it was. Barrie Munro said it would go forward as amended.

#### **5. Route One Building Design Standards**

The Public Hearing was opened and closed. No one came forward. There was no discussion.

#### **6. Increase Buffers for Elderly Congregate Housing**

Steve Burns explained that designs with higher density, like elderly or cluster housing, would have a 75- or 50-foot buffer plus a perimeter around the building.

The Public Hearing was opened. Walter Woods said that he did not have an issue of changing buffers from 50-feet to 65-feet, but that if the Shoreland Amendment becomes law, the Elderly Care Ordinance might as well be eliminated.

Barrie Munro closed the Public Hearing. Lee Corbin said that 65-feet might be restrictive when dealing with the elderly housing. She wondered what the rationale was and why it should be increased for elderly housing—there were no raucous parties. Steve Burns said the increase would provide more yard space. There would be a lawn instead of natural buffers or a hedge. Glen MacWilliams said that noise is not the issue, but that the visual and the scale are. When the scale goes up, the buffer should go up, too. It would be a ratio of mass to setback. Steve Burns said that it could be tied into building height. Building height of a story-and-a-half building is 18 feet, said Glen MacWilliams. Richard proposed making 22 feet a standard for this rule.

#### **7) Change Boundaries of the BUS-3 Zone in York Beach**

The Public Hearing was opened and closed. There was no discussion. .

#### **8) Alter Regulation of Condominium Conversions**

The Public Hearing was opened and closed. No one came forward. Steve Burns said that access to parking was an issue with the Selectmen. He had requested an opinion from the MMA. Seasonal units can be summer only, he said, and year-round units have to be year-round. Parking is the problem, he said. Barrie Munro said to have the amendment stand as written.

#### **9) Traffic Impact Mitigation on Town Roads (deleted)**

#### **10) York River Watershed Overlay District**

The Public Hearing was opened. Leon Moulton suggested that “appropriate fines” replace “maximum fines.” He said that the Board of Appeals should not be reviewing applications before there is a denial. The CEO should handle the permit as per the instructions. If there is a denial, it should go before the Board of Appeals. He said that the Watershed Overlay District setback of 100 feet from a stream edge might be excessive in some places—not on the York River, but on some of the minor tributaries.

Peggy McGehee was concerned about 10-D.2.C.1 Dimensional Standards and how the rules might provide an unintended consequence to the “subdivision the board recently approved” regarding Impervious Surface Ration. Steve Burns replied that the language came from the Board of Selectmen. “If that is the case, I will sit down,” Peggy McGehee said. The language is about the entire property, rather than lot by lot, Steve Burns added.

Michael Dow said that he had difficulty with the 100 ft setbacks into the far reaches of the streams. It affects a lot of people who don’t have a clue that this amendment proposal

is happening—and it is important to them. They are not reading the paper. They are not watching the meetings. The change will affect 40 percent of the town, he said. Barrie Munro answered that if it does not affect a lot of people, why bother with it? Michelle Moody said that there had been a lot of publicity about the amendment, but the public is not responding. Michael Dow said that this has been a particularly wet year, and it is understandable that there is be more silt than usual. He also said that the definition of a water body is vague, asking if it includes a wetland, a stream, a brook, and/or a vernal pool. He suggested that the Town send out letters to each abutter in the overlay zone, so that they know what their land might become. He said not enough professional people are looking at the amendment. He said that this amendment combined with the Shoreland Overlay would lower and put an end to people's property rights.

Stan Moody said that he had participated in a 1987 study that recommended a 330-foot protective buffer around the smaller tributaries. The pending amendment would be a stepping-stone toward going forward, he said, and it should be supported.

Walter Woods suggested bringing sewer to the homes adjacent to the river to end the need for leeching fields that are there.

Chairman Barrie Munro closed the Public Hearing. He said that the things that would not get discussed that evening would go forward to the Selectmen without changes. Board discussion about the Watershed Overlay District Amendment began with Michelle Moody saying that she was not sure if the Board of Appeals has the expertise, compared to the Planning Board, to review applications, as proposed in 10-D.2 E. Glenn Farrell said that the job should go to Code Enforcement. Barrie Munro and Richard Smith agreed.

Richard Smith added that he did not agree with the 100-foot setback on the streams, saying that the Town is asking to take 1200 acres out of landowner use. He said that going ahead with it without notifying the landowners was “a dirty deal,” and that the Comp Plan only calls for it on the York River and the watershed, not the streams. Glenn Farrell said that Torbert MacDonald had said that 100 feet is what is needed to protect the river. Some areas currently have no setback. Those areas are going from zero to 100 feet. Many of the people who are not aware, because they are not paying attention, think that they are only losing 25 feet, because others in areas that have a 75-foot setback, are going from 75 to 100 feet. It is a 25-foot difference for them, so the others think it is only 25 feet for them, too.

Barrie Munro said that the Comp Plan does not quantify the small streams, but includes them as an improvement in the standards by integrating them into the wetlands and shorelands. Glen MacWilliams said that there was an emotional appeal that is not rational. It is as if there are takings that are not fair, when in fact the protecting of the water is the actual purpose. All policies that protect the York River protect the Gulf of Maine. There aren't other issues concerning taking of land. The ordinance is providing for a common resource. This is done with scientific rationale and is 100 percent from a scientific point of view. It is a rational proposal, and the board can't deal with the emotional appeals.

**11. Historic Landmark Designation of Mt A summit** (deleted).

**12. Historic Landmark Designation of Grant.** There was no board discussion.

**13. Bus-as-a-Structure.** There was no discussion.

**14 Reduce Permitted Uses in the GEN Zones.** There was no discussion.

**15. Septic System Setbacks in the Shoreland Overlay District.**

Barrie Munro opened the Public Hearing. Leon Moulton said that setbacks should be from the high water mark, not the edge of a shoreland wetland. He thought there should be provisions for non-conforming lots that cannot meet the setbacks, and there should be an exception for lots of record. Steve Burns said that there is a provision that goes back to November 20, 1984. Stan Moody said that reducing a setback, because it is wetland and does not have a visible body of water, is inappropriate. Michelle Moody said that with the Cape Neddick Village application, the setback was measured from the open water body, the canal out back, instead of from the wetland. Richard Smith said that the Town Attorney says that setbacks are from water bodies, whereas the Conservation Commission wants the water bodies to be the wetlands, which is the way Code Enforcement has been interpreting it for years. The Cape Neddick Village application changed the interpretation. Glen MacWilliams said that there isn't proper protection for the wetlands. Lee Corbin said that considering wetlands as water bodies is asking for trouble.

**Motion** Glen MacWilliams moved to accept the Septic System Setbacks in the Shoreland Overlay District amendment as written. Glenn Farrell seconded the motion, which did not pass with a 1-4 vote, with only Glen MacWilliams voting in favor.

**16. Amend the Shoreland Overlay District Boundaries**

Steve Burns said that GIS Manager Brett Horr wants to change the wetland mapping throughout the town. Steve Burns showed a map Brett Horr had made with an example of current wetland delineations, an added wetland boundary done from an aerial photograph, plus a wetland delineated from infrared photography. The three different delineations showed different outlines of the wetland. The infrared was the most accurate, Steve Burns said. For the ordinance amendment, he suggested two overlay district changes. One was behind Stonewall Kitchen (the Adams property), and the other was at York Beach.

In Public Hearing, Peggy McGehee said that she had a letter to present, but said that if her area of concern were being dropped, she wouldn't bother to read it. Stan Moody said that he has been saying for years that the wetlands have not been properly mapped. To do it now would be great. He encouraged the board to put the amendment before the voters.

**Motion** Glenn Farrell moved to make the change to the Overlay District at the Beach and on the Adams property and drop the other wetland issues out of the amendment. Lee Corbin seconded the motion, which passed 5-0.

## Other Business/Adjourn

Steve Burns said that the Selectmen were going to adopt the Board of Adjustment Fee Schedule.

Chairman Barrie Munro introduced the subject of the inspection for an occupancy permit on the Dave Woods project by referring to the **Resolution to be made at the June 23, 2005 Planning Board**, written by Glen MacWilliams.

Glenn Farrell [speaking as Dave Woods's representative and not as a board member] said that he had asked Code Enforcement if there were any problems with getting a temporary occupancy permit, and Code Enforcement had said no. Barrie Munro asked if an as-built plan had been made. Glenn Farrell said no. He said he thought that there has to be a method to the Planning Board's site visits.

Barrie Munro recommended requesting Steve Burns write Code Enforcement that, henceforth, no occupancy permits would be issued without the Planning Board Chairman's written approval.

Glen MacWilliams read the one-page **Resolution** he had written. A copy of it is attached to the accepted Minutes.

**Motion** Glen MacWilliams moved to accept the resolution. Barrie Munro seconded the motion for purposes of discussion. The motion was not voted on.

Glenn Farrell, as the builder, explained the reasons for the incompleteness, mentioning stones, trees, paving, and a parking sign that were all concerns. Richard Smith suggested that someone other than the Planning Board Inspecting Subcommittee should determine status of the permit.

The board discussed the ethics of having a Planning Board member involved with a project. Barrie Munro handed out Minutes from the November 4, 1993, York Planning Board meeting concerning this situation. It says, "Any Board member who has a personal, financial, or other compelling interest in a matter before the York Planning Board shall not participate in any discussion before the Board. The member shall select an attorney or other agent to act in his/her behalf. Said member shall retire to the audience during the discussion."

David Woods walked in. He said that a friend had called him and told him his project was being discussed on television. He said that Glenn Farrell has built or refurbished every building Dave Woods has in town, and always steps down from the board, as required by the protocol.

Michelle Moody suggested getting a copy of the ethics policy from the Board of Selectmen. She also suggested that the Code Enforcement Officers come to a Planning Board

workshop about occupancy permits. Glen MacWilliams asked for an explanation why the temporary occupancy permit was issued. Richard Smith described the site visit, that nothing was represented as “done ready” during the visit. He said that the subcommittee was told that the applicant wanted to move in. Nothing was represented that the subcommittee could not see, he said.

Stan Moody made a point of order that this kind of matter should have been discussed at the beginning of the meeting.

**Motion** Glen MacWilliams moved to notify Code Enforcement in writing that until further notice, not to grant occupancy permits without written notification from the Planning Board Chairman. Michelle Moody seconded the motion. The motion did not pass. The vote was 1-3-1 with Glen MacWilliams in favor, Barrie Munro, Richard Smith, and Lee Corbin opposed, and Michelle Moody (voting in place of Glenn Farrell) abstaining.

**Motion** Lee Corbin moved to invite the Town Manager to come before the Planning Board and discuss the issuance of occupancy permits. Michelle Moody seconded the motion, which passed, 4-1. Glen MacWilliams was opposed to the motion.

**Motion** Glen MacWilliams moved that based, on the comments from the review of items not completed and those items listed in the Memo of June 14, 2005, if there are any, the applicant will bring a letter back to the planning board along with an as-built plan.

No one seconded the motion.

Barrie Munro said that there was a need for an as-built plan.

The meeting was adjourned. The time was 11:05.

Resolution to be made at the June 23, 2005 meeting of the Planning Board

**Resolution** regarding the findings of the Planning Board Inspection for Occupancy Permit, as referenced by notes on the Planning Board Approved Plan for David Woods/York Oil, 459 US Route 1, York, and in Memorandum to the Planning Board from Glen MacWilliams, dated June 9, 2005.

**where as**, the Planning Board Inspecting Subcommittee discovered that the Site was not completed as required by the Approved Plan when observed, and

**where as**, the Planning Board Inspecting Subcommittee observed changes to the Site, which were not approved by the Planning Board, and

**where as**, an Occupancy Permit was obtained without Planning Board approval,

**the Planning Board shall:**

1. Notify Code Enforcement and the Applicant that no additional Occupancy Permits shall be given for this Applicant until all the conditions of the Planning Board Approved Plan are met, and
2. Upon notification By the Applicant that the Site is ready for Inspection by the Planning Board Inspecting Subcommittee, conduct said inspection and report the findings to the Planning Board, and
3. The Planning Board shall conduct a public hearing to determine the cause of any defects and deficiencies in the planning and permitting process for this Applicant, including but not necessarily limited to any ethical violations that may have been committed by Planning Board Members, and make recommendations for further action by the Planning Board.

Glen MacWilliams