

**York Planning Board
Minutes
Thursday, December 7, 2006, 7:00 PM
York Public Library**

Call to Order, Determination of Presence of Quorum

Chairman Glen MacWilliams began the meeting at 7:00 by introducing the Planning Board and staff. He stated that there was a quorum. Glen MacWilliams, Vice Chairman Tom Manzi, Glenn Farrell, Barrie Munro, Richard Smith, and alternate Lee Corbin were present. No one was absent. Town Planner Steve Burns represented staff. Patience Horton took minutes. The meeting was televised.

Public Input

Open to the public to address any issue other than the scheduled public hearings

No one came forward to speak.

Field Changes

No one came forward to speak.

Application Reviews

- **Highland Farm Phase 2. North Meadow Lane and 250 Cider Hill Road.** Map & Lot 0090-0029-A, 0090-0030. Continued consideration of preliminary review of a major subdivision

Engineer Steve Haight introduced the matter by asking the board to prioritize the requested waiver for a secondary access/egress to the property. He also asked the board to go through the memo from Steve Burns, dated December 1, 2006, point by point.

Glen MacWilliams opened the **Public Hearing**.

David Tibbetts of the York Conservation Commission said his group has concerns about the water, wildlife habitat, and wetlands on the property. He said there were discrepancies between the Woodlot Alternative review of the property and the report from Gove Engineering. He asked for a full wildlife study of the site. According to Fred Boudreaux, with whom he had consulted, it would take weekly visits for three months (May, June, July) to assess the vernal pools. David Tibbetts also said that two different abutting landowners had come to Conservation Commission meetings and testified that they had seen turtles, possibly rare or endangered, hatching on or near their properties.

He asked that the wildlife study to be conducted by Woodlot Alternatives. He stressed that the Conservation Commission feels that the Planning Board should reject the Highland Farm Phase 2 plan as it stands.

John Michniewicz, 22 Rumsey Road, was concerned about added drainage from six new lots onto his property and that of his neighbor. If open space has been proposed, will it be continuous with that of Phase 1? If the ordinance calls for a second access, will it finally be enforced? It never has been before, he said.

Ala Reid, 496 York Street, said that natural resources have to be evaluated before the roads and lots are laid out. Cleanup of pollution brought to Boulter Pond, a great natural resource that is the drinking supply for Kittery and several hundred York residents, will be of tremendous cost to York, should cleanup be necessary. She asked the Planning Board to find a way to protect Boulter Pond's drinking water resource.

Glen MacWilliams conducted board discussion about keeping the Public Hearing open for further comment. Steve Burns agreed that since the public had not heard the responses to key issues, and because they have no idea what the answers are, the public should be able to speak again.

Lee Corbin said that the current 60-day window for discussion with the applicant would be over shortly, on December 12, and the timeframe should be expanded. Applicant Attorney Jim Katsiaficas said that the applicant would agree to allow the board to extend the time period through January, allowing for a thorough review.

The request to waive the second access was discussed. Barrie Munro said that there should be a careful statement of reason for either denying or granting the waiver. The Planning Board has never failed to grant the waiver, he said, except as emergency access. This being the case, if the Board chooses to deny the waiver, it must be with good reason. Glenn Farrell said that the fire chief had indicated that he does not see a need for the second access, and it is not wanted because it would be too near the pond.

Motion Glenn Farrell moved to approve the waiver of Section 9.5.8. Richard Smith seconded the motion.

Discussion ensued about creation of an easement that would obviate the need for a second access. Steve Burns said that property owners along the easement should be able to walk directly out onto Kingsbury Road. The Kittery Water District (KWD) personnel have to be able to walk to Boulter Pond. Barrie Munro said that pedestrian access to the pond is counterproductive to the KWD's need. The water district does not want any kind of activity around the pond. Glenn Farrell suggested amending his motion to include access by the KWD, but ultimately did not have to.

Jim Katsiaticas told the Planning Board that the applicant had approached the KWD with a plan to create a 250-foot easement from Kingsbury Land to the pond, making any separate easement unnecessary.

Mike Rogers of the Kittery Water District came forward and said that it would be of greatest benefit for the water supply if a second access were not connected to Kingsbury Lane. Note, this appears to refer to the possibility of a second road access using Kingsbury Lane.

Vote Chairman Glen MacWilliams called the vote on Glenn Farrell's motion to approve the waiver. The vote was unanimous, 5-0.

In response to a concern raised at the November 9 meeting by Attorney Jim Katsiaticas, Glen MacWilliams asked each of the board members, one by one, if they were current with the Highland Farms Phase 2 application, even though they might have missed a hearing. Each answered that he or she was up to speed.

Steve Haight said he was concerned about a memo that had been written and distributed by Planning Board member Tom Manzi. The Chair asked that it be discussed later in the meeting.

Concerning the subject of application completeness. Steve Burns said that as changes are made and the application falls out of completeness, the board would continue to work. He and Steve Haight would work together to figure out what is outside of completeness and how to adjust it for the following meetings.

Jeff Cantara of Gove Environmental Services said that it had not been determined that there are vernal pools on the property. As well, the probability that the adjacent wetlands are of high value is still conjecture. Those areas have to be assessed and could be common forested wetland. Referring to David Tibbetts's email comparing Gove Environmental report with that of Woodlot Alternatives, comparison of the two studies would be like comparing apples and oranges. The focuses are different. The wildlife report has not been done, he said. Reports that are going to be prepared per regulatory mandates from DEP and US Fish and Wildlife will hopefully satisfy the Planning Board's request for information. He said that a memo from the Kittery Action Group that had been distributed was full of misunderstandings. Kittery does not stand to lose 130 acres, endangered species have not been determined, neither have vernal pools, and old growth timber does not exist on the property. With the pond being 2340 acres in size, the increase of impervious surface area to the pond is small, he said.

Steve Haight brought out a chart showing the topography and setting of the proposed houses near Boulter Pond. They are at a lower level than the ridge that separates them from the pond. He showed that Rumsey Road is not in the path of the water runoff. He described how low impact design standard rain gardens proposed for certain lots would

contain some of runoff on those lots. Lots 12, 13, and 14 are the only lots with potential impact on Boulder Pond. Everything else drains away. The Gillespie nitrate assessment shows that septic in that area would have negligible effect on Boulder Pond he said. Eighty to 85% of the 2340 acres of watershed (4 square miles based on GIS calculations) is north of Boulder Pond, so the added houses impose a very small impervious area increase.

Steve Burns replied that, considering there are no houses currently in the watershed, initiating three or four house is drastic. When you look at watersheds, he said, it is rare to find any anywhere that have no houses. This watershed is house-free. Jeff Cantara argued back that when you are talking about watershed health, you are talking about a very small fraction. Steve Burns said that there are other potential impacts.

There was brief discussion about the incomplete golf course once built there. Steve Haight showed an aerial photograph of the property and the levels of growth that have come back in the 10 of 15 years since the fairways were cut. Lot numbers were discussed. Some had been changed since the last meeting with the different configurations.

Issues in the Steve Burns memo of December 5, 2006, became the structure for the conversation that followed, beginning with wetland impacts and development envelopes for individual house lots, especially those near the water body. Steve Burns explained the New Hampshire method for determining the wetland permit requirements. Steve Haight explained that soil scientist Mike Cuomo would be assessing the wetlands and soil in the next few weeks. Road grade was discussed. Steve Haight said that the 8% grade being put in some areas of Highland Farm Phase 2 could be compared with grades in other areas of York, like parts of Radon Road where there is a 12% slope. Steve Burns said that Lot 26 couldn't be used for a house. Some other use will have to be thought up for that property. Steve Haight agreed and referenced the need for a water pumping stations.

Steve Burns ran through a checklist that included plan notes, buffers, storm water drainage, erosion and sediment control, building envelopes with slopes exceeding 12%, changed lot numbers, demarcation of watershed boundaries, storage of fuel and other hazardous materials, the possibility of a communal septic system ("We want to maintain individual septic, so each home is responsible for its own," said Steve Haight), public water with its hydrants and pump station, failed septic systems ("The town has the right to take action against the owner with failed septic by fixing it and billing the owner," said Jim Katsiaficas).

Barrie Munro said that an impact statement that reflects the changes would be necessary. The Gillespie report on ground water was discussed. It was suggested that someone from the Gillespie office could come before the board and explain the report.

Barrie Munro said that when a developer brings certain things before the board, the board has to determine whether it satisfies the Comp Plan. Jim Katsiaficas said the State Supreme Court does not regard the Comp Plan as enforceable, but rather as guidance. Steve Burns asked for copies of cases to that effect, which Jim Katsiaficas said he would produce.

Barrie Munro referred to "Land Use Laws," 2006 edition, Page 22, Section 385.3 A&C, and asked for a definition of "Land Use Plan," but Jim Katsiaficas said that it was not necessary, as that legislation does not apply to planning boards, that it applied to the creation of a Land Use Regulation Commission.

Selwyn Silberblatt's well/spring was discussed. He has the right by deed to get to the wellspring on the Highland Farm property, and Steve Haight said that the applicant is making it possible for him to access it. Steve Burns said he wanted the well/spring point identified on the plan. Phosphorous control with regard to the watershed was the final item discussed from the December 5, Steve Burns memo.

Glen MacWilliams brought up an issue raised by the Kittery Water District – the waterfront/water-view Lots 15-22 and the potential for misunderstanding them as inviting places for fishing and boating. Jim Katsiaficas retold the board that the applicant hoped to establish a 250-foot wide easement for the Kittery Water District along the shore, so KWD can control what happens next to the water. The applicant has designed around the features of the property to preserve the natural areas and the connectivity, he said. Those areas are to be held by the homeowners association, which will provide for the corridors.

Jim Katsiaficas requested preliminary approval in January, explaining that some things the Planning Board and the public care about, wildlife, wetlands, and vernal pools, are not in the Planning Board's jurisdiction. They are in the jurisdiction of the Department of Environmental Protection and the Army Corps of Engineers. (Planning Board members did not agree.) Wildlife, wetlands, and vernal pools are subject to State and Federal approvals. The applicant does not want to end up in a position where it has to start the application process all over, he said, and hopes to get preliminary approval and permits soon.

The Chair invited participants back into the **Public Hearing**.

David Tibbetts, Conservation Commission, rebutted Mike Cantara (Gove Environmental's) position about the quality of the wetlands. David Tibbetts said that the New Hampshire evaluation had been made on the Highland Farm Phase 1 site, and it proved to be one of the highest-value wetlands in York. Of more than 70 sites, it came out in the top ten percent. The Mount Agamenticus to the Sea Initiative had studied the area and also indicated that it is a high-value wetland area. Some of the wetlands being filled are contiguous with those 10 acres and the York River. It is the Planning Board's jurisdiction to maintain the wetland, David Tibbetts added. Steve Haight responded to

David Tibbetts's comment by saying that soil scientist Mike Cuomo had determined that the wetlands are not contiguous.

John Michniewicz spoke again. He said that one of the big issues is how mitigation will take effect on Rumsey Road. Except for the rain gardens being proposed, he is still unsure how what the mitigation will be.

Charlie Steedman of York Harbor said that the fact that Phase 2 had been cleared 10 or 15 years ago to be used as a golf course is not a good argument. There was a golf course on Western Point 100 years ago, and it was reclaimed and reforested. He reminded everyone that the proposed development is for all time. The roads, driveways, parking areas, and houses will be there forever. It cannot be undone. As for rain gardens and retention ponds, will they be working in 20 or years from now when owners don't want them any more and they do away with them? And what is preventing owners from putting any old fertilizer on their lawns and ignoring low-phosphorous limitations? Jeff Cantara responded to Charlie Steedman by saying the gardens are jurisdictional and would stay safe. To fill a wetland or alter a rain garden, a permit is needed.

Abutter **Sharon England** said that when a large house and lawn are built, the surface is flattened, causing additional runoff. She said that she has installed rain gardens, and in doing so, trees have to be taken out because they are not part of the system. With the loss of trees comes a loss of water that would be taken in by the trees. She also said she has 1/3 ownership of a vernal pool she wishes to protect. She showed her location on the plan. She stressed that she is very concerned about what will go into the Boulter Pond area.

Barrie Munro asked the applicant to think about the basis and budget for snow removal. Also, the owners have to provide for an agency or institution in perpetuity to determine whether or not the requirements of the restricted area are met, and that information has to be reported to the Town. Steve Burns pointed out that since Phase 1 will also have private roads, would there be separate or combined associations taking care of them. Responding to Jim Katsiaticas's earlier request for pending preliminary approval, Steve Burns said that on Phase 1, after giving early approval, the board wanted to make changes in the design, but found it could not. Glen MacWilliams said that in January, the board has decide whether or not to or extend the deadline.

Barrie Munro reiterated an earlier point that dealt with the Board's latitude in interpreting the often-subjective language of the Sub Division and Site Plan Regulations and the Town Ordinances as they pertain to the protection and preservation of the Town's natural resources including wetlands, forested areas and wildlife habitat. In addition he stated that the board would want assurance with respect to the governance of the so-called "restricted areas," stating that the Home Owners Association will have to fund a policing mechanism to be determined. Barrie Munro indicated that this was not a new consideration, and that a search of the tapes for the several meetings would clearly

establish his concern with respect to the number of lots and a plan for the protection and preservation of the site's natural resources.

Jim Katsiaficas referred to Tom Manzi's memo, saying that the extent of the open space is an ongoing concern for the applicant. He called the Comp Plan a "wish document," in that it is all about what a town is and what it wants to become. Thinking that its strength goes beyond the ordinances and subdivision regulations is a mistake. Ordinances can be amended in the future, but they cannot be shifted at this time, midstream, he said. Both Glen MacWilliams and Barrie Munro reminded Attorney Katsiaficas that the Planning Board was by law required to determine whether or not an application was or was not consistent with the Comprehensive Plan. The Tom Manzi memo, he said, was shared before the applicant team got a chance to see it, which he compared to sharing an email that contained the substance of an application.

Glen MacWilliams replied that the Tom Manzi memo was distributed at the end of the last Planning Board meeting, at 11:00. Glen MacWilliams had discussed it with the Maine Municipal Association attorney about it, who said it was not *ex parte*. Jim Katsiaficas replied that his group had left the meeting before it was distributed and had not received it. Barrie Munro suggested asking the town attorney about the situation.

Motion Barrie Munro moved to invite legal counsel to review this issue with regard to Tom Manzi's memo and with regard to Jim Katsiaficas's concern. Glenn Farrell seconded the motion, which passed 5-0.

Lee Corbin, who is a planning board member and an attorney, commented that the action did not constitute *ex parte* communication, but was close to it. The board decided to have the town attorney participate in an executive session and then meet with the board and applicant in public. Jim Katsiaficas said that if it is proper to discuss the matter at the January meeting, everyone could see where it goes from there. Barrie Munro commented that the board has done well.

Other Business/Adjourn

Steve Burns handed out Superior Court Findings on an Ogunquit Planning Board appeal he had received from Bergen & Parkinson.

The meeting adjourned at 10:00.