

TOWN OF YORK PLANNING BOARD  
THURSDAY, SEPTEMBER 23, 2004, 7:00 PM  
YORK PUBLIC LIBRARY

Chairman Barrie Munro started the workshop meeting 7:10 by introducing the Board. Barrie Munro, Dave Marshall, Glenn Farrell, Glen MacWilliams, Richard Smith, and alternate Lee Corbin were there. Tom Manzi was absent. Steve Burns represented the Planning Office. Patience Horton took Minutes. The meeting was televised. Two motions were made.

### Public Input

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

No one came forward to speak.

**1) Discuss York Beach Revitalization. The town prepared a report entitled “York Beach Village Revitalization Plan,” back in the early 1990s. There is renewed private interest in this concept. Joe Lipton (Inn on the Blues) and Cathy Goodwin (Chamber of Commerce) have been invited to discuss their thoughts about this issue.**

Cathy Goodwin of the Chamber of Commerce said that three meetings about revitalization had recently been held with some core York Beach business people. She had handed out a report to the Board called “York Beach Village Revitalization Plan Phase 1,” by the York Beach Study Committee, dated May 1990. Most, she said, perhaps 80%, of the information in the report remains valid, but dialog had ceased long ago. As part of the vision for York Beach, she described the possibility of displaying a history collection, including an extensive post card collection, in the Weinbaum Building. Up scaling building facades and incorporating window boxes and streetlamps are parts of the visual goal. Selling bricks as a fundraiser is a possibility. The goal is to keep the beach community plus make it a community for more residents to utilize.

Joe Lipton, a local for 24 years, had restored the building formerly situating “Bogart’s,” now “Inn on the Blues.” He spoke about parking and sidewalk problems and conjured up the streetlamps and trees and overall beautification, including open space for public use. He said photos of the Beach’s former glamour inspired him, in the days when trolleys delivered visitors there. Raising money to make changes would most likely include not only working with the Chamber, but also forming a merchants’ association.

Glen MacWilliams mentioned an upcoming, downtown revitalization conference in Auburn. Lee Corbin described successful revitalization that had been made in Boothbay Harbor, where parking lots were created, and traffic problems were solved. Barrie Munro said that ideas had bounced around in the past about moving the parking to the perimeter of the Beach and bringing people in with organized transportation. It is important to util-

ize the Comp Plan throughout the process, he said. Glenn Farrell said that Beach landowners should get other things into their shops than t-shirts.

Joe Lipton said that signage is necessary for directing people from Route 1 to York Beach. Barrie Munro said that the involvement of York's Wild Kingdom is crucial to the Beach improvement. Accessing the Beach area through Wild Kingdom would be incredible, he said. Joe Lipton said that the revitalization projected should be guided through the ordinances by the Planning Board. Owners in the Beach area generally find that bringing things up to code is too expensive, and some would rather let buildings rot. Cathy Goodwin described bringing experts with the Charette process on board for a brainstorming session. It would allow free-flowing ideas to be computerized into graphics producing visual views of the potential changes. Joe Lipton re-emphasized the need from guidance from the town government. He invited the Board and audience to become involved and advertised his restaurant/nightclub shamelessly into the television camera (open weekends now through the New Year) to everyone's amusement.

Richard Smith described the drainage as impossible to control, with the high water occasionally sweeping through York Beach with no place to go except back into the ocean. Steve Burns said that a drainage study from Cape Neddick River to the York River is due within the year. Glenn Farrell said that working with Wild Kingdom would be the biggest priority. Getting the power lines away from the overhead was also important. Certain changes would require bringing the project forward to the voters in small pieces. Steve Burns said that the overall agenda for the Planning Board is very full for the next year, and it would not be soon that the Board could get involved in such a large project.

## **2. Condominium Conversions. Discuss the Town's regulation of condominium conversions.**

Town Planner Steve Burns suggested that as part of condo conversion, the Planning Board could ask applicants to bring plumbing and electric up to code. Looking 5 years out, roof replacement could be required. The basic work in condo conversion, as seen in the recent Stones Throw application, lies in making the application complete. In this, the Board really faces no substantive issues. Barrie Munro said that, basically, density is based on net developable acreage, and that the matter can be brought up at a different time. The Board members agreed without further discussion.

### **Discuss Planning Board Policies.**

Barrie Munro had compiled and distributed a document called "Planning Board Meeting, September 24, 2004, Meeting Notes, Planning Board Policy Discussion, Policy Definition," which document he read aloud. It included a section with 7 regulations on how the Board should handle changes and default. He asked how the Board knows it has been consistent and wondered how the Board can gain more consistency. For example, how do they determine when a well water requirement has been met satisfactorily? How can they get a policy on Open Space in writing, enabling consistency? Under what situations is the underground utility requirement waived?

Glenn Farrell said that changes for the improvement of a plan need to be made in a timely manner. The Board helps people meet the ordinances. When there is a problem, a job cannot be shut down for two months waiting for a Planning Board hearing because of an error in the plan. There has to be a better method. Lee Corbin said that each waiver has to be granted as they come along. She suggested distributing the workload on the Barrie Munro document by assigning a different section to each member, a subcommittee on larger items, who would work intensively on it and then prepare a report with facts and recommendations to present to the rest of the Board. Dave Marshall thought it best to prioritize the list. Richard Smith said that things had to be treated individually, and not get just get rubberstamped.

Barrie Munro said that parts of the subdivision regulations and Route 1 regulations should be shared. Steve Burns said, "Hallelujah." They need to be brought together, especially in design standards and completeness standards. Barrie Munro asked the board members to prepare and submit a list of 4 or 5 items of concern for Steve Burns to tally.

Glenn Farrell said that the town official who does the inspection currently has the authority to make changes. When one type of applicant wants to make a change, the applicant asks the official from the town. But the other type of applicant just does things to a lesser standard than what was required, without agreement. Steve Burns clarified that the town official (town engineer) allowing the changes has not been direct to follow the ordinances. Glenn Farrell said that that the argument is that you can't make a change outside of what the ordinance says. Dave Marshall said that when the change has already happened, there was a substantive change with nothing in writing. The town official has said OK, and that is the problem. That causes a dilemma. Perhaps the Board should to explain to the town employee what is "substantive." It has to be capped. Then the Planning Board must figure out what to do about it.

Steve Burns said that Town Engineer John Treat reports to him. Steve Burns recently told John Treat that a Plan Note might be added stating that all field changes are reported to the Planning Board. The Plan Note would say that the builder may proceed with the changes at the builder's own risk, but then must come before the Planning Board.

Glen MacWilliams asked if John Treat makes the decision whether or not the owner can make the substantive change. Steve Burns explained that John Treat does engineering reviews for engineering-design changes and no other changes. Code Enforcement has the authority over the rest. John Treat is an engineering inspector, not a code officer.

Glenn Farrell said that when the builder moves a wall five feet, Code Enforcement goes and sees that John Treat has signed off on it (note: specifically referring to the Blue Star building on Route 1, which had turned out quite differently than how the Board approved it). Barrie Munro said that the drainage situation had caused the building to go up one foot. Other changes included the unforeseen construction change producing a 1-piece, rather than 3-piece, retaining wall at the rear of the property.

Steve Burns explained that the Town Engineer checks the sub-base for roads, foundations, site work, drainage, steel enforcement—just what is on the plan. He is not certifying that everything is up to town code, just that the engineering is sound.

Barrie Munro said that the Board wants to know about the changes as quickly as possible. Steve Burns asked if, when he gets change orders, he should bring them to the Board. Dave Marshall clarified that “substantive changes” were the concern. Glenn Farrell asked just what changes the board wants to see. Steve Burns said that the board can make it so that John Treat will not approve any substantive changes, just field changes that do not effect the plan. Steve Burns said that the Board can make an instant stop on construction. Dave Marshall said that the Board can also have them go ahead at their own risk. Lee Corbin said that including “at your own risk” is not good, as then the Board will receive attorney letters. Glenn Farrell said that there are a small percentage of changes the Board seeks to catch, like the retaining wall. Blue Star was approved for a 3-tier retaining wall, but when the builder looked at the slope, the builder decided to do it with one solid wall. Structurally, environmentally, and ecologically, it might have been better, but it was a change the Planning Board didn’t know about, though John Treat had signed off on it. Glen MacWilliams added that a signoff from that project’s landscape architect had not yet been received.

Dave Marshall said that the Board had to have criteria for approaching the problem. He suggested including Steve Burns’s previously mentioned engineering footnote into the Plan Notes for the time being. Glen MacWilliams suggested taking the arbitrary nature out of the action by moving the matter out of the sub-regulations and into the ordinances.

**Motion** Dave Marshall moved to put into effect the inclusion of a Plan Note on all plans, including the ones currently in use, stating that all substantive field changes are to come back to the Planning Board. The builder may proceed with the changes at the builder’s own risk. Richard Smith seconded the motion.

In discussion, Lee Corbin said that she was in favor of taking out the part about the builder’s own risk. Barrie Munro believed the builder’s risk part should be left in. Steve Burns asked if other town officials with influence in the matter. The Board decided that Public Works, Code Enforcement, or the Inspection Engineer would also be excluded from approving such changes.

In further discussion, Glen MacWilliams said the word “substantive” should not be used, because it was vague. Steve Burns clarified that if the change affects the appearance or impact, then the engineer has to bring it back. Dave Marshall explained the that motion was created to prevent more unexplained changes from happening. Glen MacWilliams said that he did not feel that it would work.

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

**4. Plan of Action for the Rural Zones. The Board made this one of the top priorities of November 2005. The Board needs to decide how to approach this task.**

Town Planner Steve Burns showed a map with York's four rural zones. He asked how the Board might successfully inform the public about the zone changes. Gathering and utilizing public input should make an outcome that is supportable, and the changes should be passed. Glenn Farrell agreed that the process should be slow and transparent. Get the input. Make the changes. Barrie Munro said that there are not many changes being suggested. The larger lot size requirement in GEN-1 is probably the biggest. Steve Burns said that the Board should move ahead because consistency requirements in State statutes require that the change is complete within 2 years of adoption, and the longer the wait, the greater the risk. Glen MacWilliams said that the motivation for the rural zone adoption is centered in the Comp Plan.

### **Other Business/Adjourn**

Barrie Munro said that Walter Woods's lawyer, William Dale of Jensen Baird et al, in Portland, had written the letter saying that holding Walter Woods in default is improper. He asked the Board to "do the right thing and rescind its prior vote." Barrie Munro said that the Planning Board might want to respond to the letter. Glen MacWilliams said that the lawyer had overlooked the name of the defaulted builder, Graystone, and referred only to York Building and Design. Steve Burns agreed, saying that the default finding was on Phase 1, and not on the new application. He recommended taking no action. Glenn Farrell said that if the Board does not agree with the letter, it should respond to William Dale and say so. Barrie Munro said that it does not change the finding. Dave Marshall agreed that that builder was Graystone. Lee Corbin said that the action William Dale described in the letter was not the action the Planning Board had taken. Glenn Farrell thought that perhaps the reply letter should have the York Town Attorney's letter recommending default attached to it.

In yet other business the York Housing Authority had sent invitations for the Board members to attend the opening of their Phase 2, senior housing. Steve Burns also said that Verizon was requesting a Public Hearing on October 28, 2004, though the meeting was a scheduled workshop, not a public hearing. However, being scheduled at that time would allow Verizon to return with probably tabled, remaining issues on November 11, two weeks later, thus hastening their process. Barrie Munro asked that copies of the cell tower ordinance be distributed to the Board for review. Steve Burns recommended a site visit and stated that the application is 99% complete and smartly put together.

Glenn Farrell brought up the 40-ft setback issue that had been part of the "Dave Woods Project—Big Apple" hearing at the September 9, 2004, meeting, two weeks previously. This led to a discussion where Glenn Farrell, who was recused from the matter and not in attendance on the 9<sup>th</sup>, anyway, stressed that the ordinance allowed the replacement building to be no closer than the existing setback, which was determined by the gas pump canopy that had been torn down. Glen MacWilliams said that at the previous meeting, the Board determined that the 40-foot setback was not only consistent with other setbacks, but was also do-able. A waiver could be given on the side setback to accommodate additional area. Dave Marshall said that two weeks before, the Board members interpreted it

that when it the new building is set back, it is more non-conforming. Beside that, at the first and original hearing several months ago, the Planning Board had instructed the applicant that the building could not be closer than 40 feet. Dave Marshall did not want the September 9 Board to undo what the Planning Board had done before. Glenn Farrell said that the ordinance was never interpreted like that before, more nonconforming when set back. It is usually treated that as it is moved forward, then the waiver cannot be applied for the side. Keeping the side lines as they are and moving the building forward keeps it non-conforming, he explained.

Steve Burns explained that §17.2.5, the new shall not be more nonconforming than the old, conflicts with §17.2.1. The difficulty is in demolishing and then enlarging. The new building cannot be more nonconforming in any respect. Glen MacWilliams said that he would like to see a legal opinion on it, so the Board could move along. Barrie Munro agreed and suggested going to the Maine Municipal Association.

**Motion** Glen MacWilliams moved, and Richard Smith seconded to ask Steve Burns to contact the MMA for clarification. The motion passed, 5-0.

The meeting was adjourned at 10:35.