

York Planning Board
Thursday, September 13, 2007, 7:00 P.M.
York Public Library

Call to Order, Determination of Presence of Quorum

Chairman Glen MacWilliams began the meeting at 7:00 and determined presence of a quorum. Beside Glen MacWilliams, Vice Chairman Tom Manzi, Barrie Munro, Dave Woods and alternate board member Lew Stowe were in attendance. Lee Corbin was absent, and Lew Stowe was asked to vote in her place. Community Development Director Steve Burns represented Planning Department 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.

JoAnn Fryer of CLD Engineers spoke on behalf of **Atlantic House**, which had received a conditional approval on May 10. Since then, the State Fire Marshall had given approval. JoAnn Fryer had submitted the Findings of Fact for the project to the Planning Board. She asked the board to sign the findings during the break. The lighting plan was complete. Also, the boundary had been amended according to an assumed right of way based on a fence that had been in place for more than 20 years.

Because of a health constraint, **Ron Nowell** asked to speak ahead of the application review for the **Borkowski** application. He apologized to Steve Burns and the Planning Board for publicly made comments he now considers poorly researched, which were about this application. He spoke of the inter-local agreements between the Towns Managers of Kittery and York regarding first response to emergencies (first responder) by Police, Ambulance, and Fire companies, written in the form of mutual aid agreements. The Chairman closed the Public Hearing.

Field Changes

Minutes

Review and approve draft minutes

There were no minutes to review.

Application Reviews and Public Hearings.

DPW Realty LLC, 15 Cider Hill Road. Map & Lot: 0053-0023. Application for amendment of Route One Use Permit.

Applicant David Webber said that two overhead doors and a ramp had been added to the building, and he had cleared the northwest corner of the property. He told the Planning

Board he hoped to amend the use permit so he could allow new tenants into his building without having to come to the board for approval of each tenant's use. The chairman opened the **Public Hearing** and closed it, because no one came forward to speak.

Glen MacWilliams said he did not want to authorize uses without understanding their impact. Steve Burns said he kept the permissible uses on the list for that zone that were not based on heavy customer use. He had taken out retail and restaurant use, because there was no room for parking at the DPW property. Barrie Munro noted that the application provided for the applicant to select tenants from among the eight items on the list, and then go to Code Enforcement, where the use could be deemed acceptable or not. The board discussed changing the language directing changes in use to Code, reflected in the motion.

Motion Barrie Munro moved to accept the proposed uses listed in Note 2, and any others that are allowed. The opening line of Note 3 of the general plan notes will be amended to read "All uses listed in Note 2, and any other allowable use, shall require Town of York Code Enforcement, etc." Dave Woods seconded the motion, which passed, 5-0.

York Village Business Center Amendments. 14 Cider Hill Road. Map & Lot: 0053-009. Amendment to the approved plan to divide the lot in two.

Project Engineer Jim Hanley said that at the last review on July 12, he received final approval for the modification of the Business Center. The subdivision being presented will divide up 14.3 acres, of which roughly 10.3 will be designated for the business center, and about 3.9 for Rite Aid property. He described the frontage for both lots along Route 1 and Route 91. He described dumpster locations for both properties. He showed the new position for a stockade fence, which had been determined during the site walk taken by the planning board in July.

The chairman opened the **Public Hearing**. Abutter Scott Franklin said the DL Poulin construction manager had agreed with Scott Franklin's sister to put up an additional fence screening her property. He expressed his concern over the snow storage area, close to his sister's house, and the possibility that it will make her cellar wet. He was concerned about the smell from the two dumpsters, which are about 35 feet from his lot line. As well, he was apprehensive about the light in the south corner of the property, 20 feet away from his home. Glen MacWilliams closed the public hearing.

Jim Hanley agreed that the new fence for Scott Franklin's sister was going to be added. He discussed the catch basin for the draining snow storage. The board discussed the importance of eliminating the impact of water on the Franklin property. Tom Manzi said that a positive, sloping berm should be required. Glen MacWilliams asked Jim Hanley to improve the area to avoid the potential for a water problem.

In discussing the splitting of the lot, Steve Burns described it as the division of land, plan modification, and a subdivision. The split cannot create a new non-conformity. Setbacks and buffers can be maintained, and the split can occur without non-conformity.

Motion Barrie Munro moved to divide the two portions of the lot. Lew Stowe seconded the motion.

In discussion, Lew Stowe asked if the Rite Aid lot is buildable. Steve Burns explained that the broader wetland in that area is considered a manmade wetland, created because of the failure of the culvert under Route 1, due to the fact that the culvert had become clogged up and non-functional. It is not a wetlands and is, therefore, the lot is buildable.

Vote The motion passed, 5-0.

Michael and Terry Estes. 519 U.S. Route One. Map & Lot: 0048-0043.
Application to amend Route One Use Permit

Bill Anderson, Anderson Livingston Engineers, reviewed the issues of the application, specifying that the “extra” parking space leading to the Doherty property had been removed, and a no-parking sign was posted there. The 112 spaces that had become 111 spaces. He showed the architectural. Glen MacWilliams opened the **Public Hearing** and read a letter from abutter Judy Martin into the record. Two lights from the applicant property shine into her dining room and bedroom. She has come to consider those lights a condition for living where she does, but she asked that there would be no additional lighting with the building change.

No one else came forward. The **Public Hearing** was closed. Mike Estes said he was not aware of the current lighting problem, but would work with Judy Martin to made sure it does not get worse than it is. Glen MacWilliams asked if the situation can be made better. The board is not looking for lighting plans, but wants the current problem corrected. Dave Woods said that the extra parking space should be hashed out to keep people from parking in it. Mike Estes said the space can be x’ed out.

Motion Barrie Munro moved to approve the revised subdivision plan with the requirement that the lighting problem be corrected, that the parking place that is to be eliminated be striped, that the work shed discussed be removed, and that ballards be installed as appropriate. Dave Woods seconded the motion, which passed, 5-0.

American Legion 9 Hannaford Drive. Map & Lot: 0053-0026. Preliminary Review for a new 11,400 square foot community center.

Glen MacWilliams recused himself for this hearing, only. Vice Chairman Tom Manzi conducted the American Legion hearing. Representing the American legion, Steve LaPointe spoke and introduced the team of Mike Livingston, engineer, John Powers, architect, and Ryan Byther construction manager. Steve LaPointe went through the history of the application, beginning the 10 years of fundraising for the \$100,000 that had been spent on the project to get it to this point. The American Legion is made up of veterans, sons of Legionnaires, and the Ladies’ Auxiliary, all of whom come together and provide great assistance to the community, he said. At the sketch plan hearing in April

2007, the Planning Board had directed most of the parking to be relocated to the back. As well, continued Steve LaPointe, 12 other items were attached to the list of changes that were needed. So, new plans were given to Steve Burns on July 22. However, the Legionnaires could not fit on the crowded August agenda. They learned shortly before tonight, September 13, that their application was incomplete. They should have received that knowledge earlier, Steve La Pointe said, because Hannaford is granting the land for the American Legion hall, and the grant will be rescinded if work is not begun by December 22. He expressed the situation as hard-pressed and the Legionnaires as a little nervous.

Mike Livingston showed the plan changes and the architectural rendering, including the reduction of front parking spaces to 10. The utilities are in place from the original Hannaford Subdivision, and there is a large detention pond for Hannaford off the property. To handle the small flow of water on this property, there will be a small detention area in front. Terrance Parker has prepared the landscaping plan. There are no residential abutters, no glaring lights. Existing wetlands are at the back of the property. Builder Ryan Byther, whose construction company comes from South Portland, said he hopes to begin in October and finish in March.

The Chair opened the **public hearing**. Neighbor **Scott Franklin** asked that the lighting be well shielded.

William Hallisey, a member of the American Legion, spoke further of the concern surrounding the timing and the delay caused by the Planning Board. He described the importance of the American Legion to the community. He described how funds were raised. Tom Manzi asked how great the extent of activity that constitutes “construction” has to be, as required in the Hannaford grant. William Hallisey said that initial construction could entail cutting down trees, bringing in gravel, or bringing in a construction trailer. Hannaford will not grant an extension. The land is worth \$575,000, and Hannaford would probably love to sell it on the open market, he said.

Steve Burns suggested having the applicant back at the Planning Board meeting two weeks away, putting them at 7:00, at the very beginning of the workshop meeting. By leaving the **Public Hearing** open, and not closing it at this time, new notification would not have to be sent out. Barrie Munro spoke to the audience of Legionnaires, saying that meeting the drop-dead date should not be a problem. There is adequate time remaining to obtain a permit. The applicant would also have to add a lighting plan describing the amount of light to the perimeter of the property to the list of requirements.

Steve Burns explained that §6.3.7, a new requirement, calls for a calculation of the dirt removed and fill brought in. This information is largely what is keeping the application from completeness. Written input from Water and Sewer are also required. Barrie Munro added that the Planning Board does not want to make a conditional approval on this application, so at the next hearing, it will hopefully be for both preliminary and final approval.

Motion Barrie Munro moved to table the American Legion application for two weeks in order to provide time to fill in all the gaps suggested by the Town Planner, and so the Planning Board can review the Preliminary and Final Applications. Dave Woods seconded the motion. The motion passed, 4-0. Glen MacWilliams was not present to vote.

Borkowski. Off the end of Woodside Meadow Road. Property located in Kittery. Application for subdivision in Kittery with sole access in York.

Project engineer Steve Haight said that at the last meeting, there were two predominate issues: public safety and the 5-foot by 50-foot connective easement. Since then, Fire, Police, Public Works, and the Town Manager have reviewed at the matter, and Attorney Jeff Clark has written a letter stating that the easement does not form a substantive change to the subdivision.

Chairman Glen MacWilliams opened the **Public Hearing**. **Bob Tarbox** described himself as a retired refueling engineer of a nuclear reactor, able to gather facts and ask questions, which he was about to demonstrate. After reviewing the planning package, York Subdivision Regulations, and State Statutes, he determined that the right-of-way, change to the subdivision, and the review of the application are the most immediate issues. According to 1975 minutes, the right-of-way does not allow access to Kittery. He said he had never been notified of the hearing in Kittery, which is required by State statutes, since it is a Kittery subdivision. The preliminary and final applications being submitted together, per §6.2.3, form another issue for him. The package does not have a letter from the fire chief, required by §6.3.26. He cited other weaknesses in the application, finally coming up with the conclusion that there is no way the Planning Board can approve the application unless, the many points he raised that evening could be addressed.

Cory Tarbox asked only one question, “How is this transaction to benefit the citizens of York?”

Attorney **Jeff Clark** spoke next. He said the applicants do have the right to cross the Woodside Meadow, because of the easement deed. Secondly, there is no modification to the Woodside Meadow Plan. The late Carroll Blaisdell owned the land in Kittery, and he owned the right-of-way that goes to his property. He anticipated it, and so did the Planning Board at that time. Jeff Clark asked the board to focus on the review as a proposed change to an existing subdivision. Steve Burns said he believed the board was focusing on the subdivision infrastructure that crosses over a town boundary. Jeff Clark replied that Police, Fire, and Public Works are the hurdle, and the Planning Board is past that.

Steve Haight read an email from the executor of Carroll Blaisdell’s estate. It said that when the strip at the end of Woodside Road was offered for sale, Bob Tarbox turned it down. He also read a statement from developer, Duane Jellison. It read that when

Carroll Blaisdell offered to sell the land in Kittery to Duane Jellison, Duane Jellison declined the offer.

Bob Zakian of Woodside Meadow said the he does not care if there is a subdivision, but he does not see why York should provide services for people in Kittery. He does not want to pay for mutual aid and first response.

Bob Tarbox spoke again. Per §3.1.7, if the right-of-way were sold to the subdivision, permission would have had to be granted by the Planning Board, which did not occur. Minutes from Kittery Planning Board say that the amendment would have to have approval of the York Planning Board. The Chairman closed the public hearing.

Dave Woods said that Carroll Blaisdell retained the right-of-way for himself and did not turn it over to the neighborhood association. If Carroll Blaisdell said he intended for the right-of-way to never be used to access the land, he did not follow through and prevent that from happening. Lew Stowe read an organized, four-page executive summary he had written after carefully researching the Registry of Deeds and the York and Kittery records with regard to Woodside Meadows, the Kittery Land Trust and Town of Kittery land development.

The Public Hearing had been closed, but after board discussion, Chairman Glen MacWilliams allowed applicant representative Steve Haight respond to the Executive Summary. Steve Haight said the application is being heard in Kittery in the upcoming week, he said. Mailing labels have been provided, and abutters from York have been notified about that meeting. There is conjecture in the executive summary about the 5-foot by 50-foot easement, he commented. Steve Haight also said he had spent time with the Kittery town Manager, who agreed that making the road private, so residents have to take care of it, themselves, is a good approach. Steve Haight spoke about the memo of understanding concerning first response. In the near future, York will be taking all 911 calls from Kittery, anyway. He said that the memo has not been signed because it the application is not approved. The Town Planner in Kittery, who is new, put the Findings of Fact together, so it has not been reviewed. He is not sure why Mrs. Blaisdell gave up the right to Norton Road in Kittery, as stated in Lew Stowe's Executive Summary. The memo of understanding includes the intention that the residents will, once a year, pay the Town of York to remove the trash. The 5-foot by 50-foot easement will serve to pass and re-pass from Meadow Road to the land in Kittery.

Board discussion included Glen MacWilliams's idea about turning the issue of the fire, public works, and police infrastructure over to MMA for legal review and assistance. Steve Burns recommended that if the board does not have enough information , it should not accept the application as complete, because that would start the 30-day clock during which the final decision must be made. One by one, Glen MacWilliams polled the members of the board, asking if there was enough information to accept the application. Lew Stowe, Tom Manzi , and Glen MacWilliams all answered, "no." Dave Woods and Barrie Munro said, "yes." The MMA would be utilized for an opinion. Steve Haight

asked how long it would be. Glen MacWilliams answered he would ask MMA to get to it quickly.

York Hospital, 15 Hospital Drive. Tax Map 0050, Lots: 6A, 11, 22, 23, 23A, 24, 26, 30, 32, 33, & 34. Application for a Preliminary Site Plan Review.

Steve Burns said that in June, the applicant learned that the shoreland boundary on the Hospital property was not defined as previously thought, and the change would negatively affect what is proposed in the current application. Consequently, a proposed code change has been requested with the selectmen to accommodate the shoreland boundary, and that zoning change will be forwarded to the voters in November.

Hospital Chairman Judd Knox said that the hospital grounds were voted to be a specific zone in about 2003 or 2004. A year later, there were shoreland changes, which has caused conflicting ordinances for hospital expansion. The planning board can vote on this, after the November referendum. Steve Burns added that Judd Knox does not want to start the review until October, though there is abutter present for this night's hearing.

The chairman opened the **public hearing**. Kinley Gregg said that she wanted to read a statement into the record, but will not at this time. The chairman closed the public hearing.

Old Business

1. Scudiere Findings. Finalize the findings for this case

Glen MacWilliams said he did not have a problem with the Findings. Barrie Munro moved to approve them.

Motion Barrie Munro moved to approve the Scudiere Findings. Lew Stowe seconded the motion.

In discussion, Tom Manzi said that there is no reason in the Findings, themselves, that explains why the board went in the direction it did. Glen MacWilliams said that the Board of Appeals understands the reasoning of the vote. Barrie Munro said that the Planning Board has tried to make the Findings factual. The reasoning is also clearly stated in the Minutes. Tom Manzi said the Findings were incomplete. Glen MacWilliams asked if the Planning Board has the right to amend them. Steve Burns answered that the Planning Board has every right to amend them, but that burden is on the applicant, Paul Scudiere, and his lawyer, Greg Orso, who will be the one to argue in favor of the Findings.

Vote The motion to approve the Scudiere findings passed, 3-2, with Glen MacWilliams, Barrie Munro, and Dave Woods in favor, and Tom Manzi and Lew Stowe opposed.

2. Preference Votes. The Board needs to take preference votes on Comp Plan and Ordinance amendments it has proposed.

While sending Comp Plan and Ordinance Amendments forward to the Selectmen for possible placement on the November, 2007, ballot, the Planning Board members showed the degree of their preference for the individual items with the following votes.

1. Inventory/Analysis Historic & Archeological Resources Chapter 5-0
2. Inventory/Analysis Update the Natural Resources Chapter 5-0
3. Policy Watersheds Management Policy 4-0
4. Policy Storm Water Management Policies 5-0
5. Policy Unfragmented Blocks of Undeveloped Lane 5-0
6. Road Spec. Amend the Public Road Acceptance Ordinance 5-0
7. Floodplain Regulate Locally Designated Flood Prone Areas 2-2
8. Town Septic Update the Town's Supplemental Septic Rules 5-0
9. Zoning Density and Use Standards with Respect to Public Utilities 5-0
10. Zoning Shoreland Amendments 4-0
11. Zoning Shoreland Amendments at the York Village Hospital Overlay District 5-0
12. Zoning Special Exceptions 5-0
13. Zoning Building on a Non-Conforming Lot 4-0

Other Business/Adjourn

Glen MacWilliams handed out information about a Portsmouth website concerned with the Piscataqua River.

Steve Burns passed out information about Maine PUC and group processes that help with comprehensive planning.

The Planning Board will meet jointly with the Board of Selectmen on October 15.

Christine Grimando is the York's new Town Planner.

Dave Lincoln has forwarded information about a zoning concept in Telluride, Colorado.

Peter Davis has received final certification for the road he as developed. Mike Livingston certified it.

The board members signed the Mylars for the Peter Davis road.

The meeting ended at 11:35.