

**TOWN OF YORK PLANNING BOARD  
THURSDAY, OCTOBER 24, 2002, 7:00 P.M.  
YORK PUBLIC LIBRARY**

In Chairman Glenn Farrell's absence, Dave Marshall conducted the meeting, which began at 7:10. Al Bib, Barrie Munro, Torbert Macdonald, Dave Marshall, and alternate Mike Estes, who was asked to vote in Mr. Farrell's place, attended. Town Planner Steve Burns and Land Use Technician Brett Horr represented Staff. Patience Horton was the recording secretary. The meeting was televised.

**Hickory Meadows Subdivision. Map 90/Lots 14F & 17.** Public Hearing. Consider Preliminary and Final Plans for proposed 7-lot subdivision.

Referring to his Memo of 10/21/02, Steve Burns gave the background of the matter. On 7/18/02, the prior application was denied because of encroachment on neighbor's property and wetland deficiencies. Since then, the applicant had accomplished the directives of the Board regarding engineering approval and conservation approval, and was prepared to demonstrate that the application was complete. The Board's task at hand was to verify final application standards, if accepted, and hold the public hearing, which was to include letters from abutters, the Cowenhovens and Art Cannon. He recommended conditional approval and had plan notes to recommend.

Bill Anderson, of Anderson Livingston Engineers, pointed out that a couple of changes had been made and had gone through the Town Engineer. The changes included a bigger detention pond and a stabilized construction entrance. He handed out notes about underground utilities and lawn fertilizers. He said that the ownership had become solely Robert Withington's.

Barrie Munro asked Mr. Anderson to walk them through changes in the drainage pattern. He showed that the changed flow pattern was only on land totally owned by the applicant. Steve Burns said that the seven lot owners would have perpetual maintenance of the drainage area. The road right of way would go to the town, when the town takes over maintenance of the road. Dave Marshall asked about the establishment of the lot-owners' association. Bill Anderson replied that all the bylaws were finished. Barrie Munro inquired after the 12-inch culvert across the Cowenhoven's property. Mr. Anderson said that it would no longer be part of the system. Torbert Macdonald asked about the potential for sheet flow from freezing water. Mr. Anderson replied that the drainage would have excess capacity, and water won't go over the road. The 50-year frequency storm will be provided for, however a 100-year storm might get it up to the level of the road. Mr. Macdonald asked about freezing inside the drainage system and the possible obstruction so caused. Mr. Anderson described a 15" culvert that will take on all kinds of storms. The detention pond will dry up within a few hours of bad weather. Mr. Macdonald asked who would have the liability in the event of freezing. He showed an elevation of the pond with respect to the road.

Vice Chairman Marshall opened the Public Hearing by reading the October 24, 2002 letter from Nick and Anne Cowenhoven into the record. It highlighted concerns over safety, pond design, the guardrail, underground utilities, and the environment. The letter was interrupted along the way for discussion. First, the safety of the driveway on Lot 7 and the need to access that lot from

Old Mast Road, rather than Route 91, was discussed. Steve Burns pointed out that, as required in Section 8.1.3, the driveway will have to be more than 50 feet from the intersection.

The 35 MPH speed limit along the ridge near the intersection of Rt. 91 and Old Mast was discussed, as well as the signage there. Different factors caused danger at the intersection, including the sight-obscuring hill preceding the turnoff (which was thought could be shaved down), the radius of the turn, and shoulder-height growth along the adjacent berm. The Cowenhovens' letter also referred to the lack of emergency spillway for the drainage system. If the storm pipe were to freeze, storm water could flood over the road onto the Cowenhoven property, causing damage. Barrie Munro suggested having a plan note requiring maintenance in the retention area. Bill Anderson described the filtering of debris through grass around the drain. The area would be easily mow-able, he said. Torbert Macdonald asked if the intake would be screened to protect children and animals. Bill Anderson said that it would be open, which will help prevent it from getting clogged.

The Cowenhovens' letter also stated that the proposed guardrail would decrease the value of their home and requested that the rail either be eliminated or made from wood. Mr. Anderson discussed the safety hazard, necessary fill, and required removal of a certain oak tree in eliminating the guardrail. Dave Marshall asked Steve Burns if Section 9.7.2.4 could be waived to reduce the slopes along the road. Mr. Burns answered that, if warrants were no longer met, the applicant could eliminate the guardrail. Anne Cowenhoven said that, because the road had been moved, there was no longer an issue about steep slopes. She and her husband were asking to redo the profiles showing where the road was currently planned. She wanted a 3-1 slope, rather than a 2-1 slope. She said that no one had approached them with this new plan about the road. She had not had the changes looked at. Bill Anderson said that he had sent the drawings. He showed 10 feet on her property where they have to have 3-1 rather than 2-1 slopes. Al Bibb brought up the wooden guardrails, saying that former Public Works Director, Marvin Swain, had recommended metal, and his successor wanted metal, but could live with wood.

The Cowenhovens' were also concerned about the underground utilities and the probability that all lots wanted to have them, except perhaps the Serfasshouse, which might leave one utility pole remaining in the neighborhood. Steve Burns said that the solution would be to give everyone a warning and a certain amount of time to hookup. The letter also brought up the environment, erosion, and the proposed guidelines to protect the river from erosion and fertilizers. A September 16, 2002 letter from the York County Soil and Water Conservation Service, which the Cowenhovens had not yet received, had approved all the plans that had been put before it.

The Chair read the October 23, 2002 letter from abutter Arthur J. Cannon, who compared the general good dealings he has had with people in York, with those of the developer, from whom he has received "no cooperation." His letter brought up the berm on Old Mast Road, particularly identifying the shrubbery as the cause of sight problems. He had offered and agreed to "trim or relocate shrubbery to improve the sight line" with the developer, who then never contacted him again for follow-through. Bill Anderson said that he believed that the applicant had addressed all of Mr. Cannon's concerns in some way or another.

Abutter Ginny Whitley spoke to the Board. She had been told that the plan offered was not a new plan, and that there were no changes to it, but she considered the changes new enough that they should have been submitted to her engineer. Bill Anderson replied that there were minor changes and that he had submitted the plan to the Town, where she could have viewed them. Dave Marshall explained that the depth of the pond and the different slope were minor revisions that did not affect her. She said she had picked up a plan from the Planner that was not the same plan. Steve Burns said that she had not gotten it from him, but from his assistant, who was neither involved nor knowledgeable about the current status of the plan, and most likely gave her the wrong one. Ms. Whitley had a list of questions, points made by her engineer, which including issues about curbing missing from the catch basin, the distance of the culvert from her leech field, the cutting of vegetation in the wetlands for which a waiver was needed, and excavation

along her property line. Bill Anderson explained the drainage excavation, catch basin, 25-foot strip, manhole, and trench. Ginny Whitley replied that it is beside her leech field and in a sensitive area that requires Shoreland permits. The diverted storm water would cause erosion in the swale, she also said. An emergency spillway was not part of the plan. The impervious area for the new lots was underestimated. Bill Anderson replied that the house sizes and driveways are not yet estimated. The footprints would be sized for 2500 sq. ft. houses. Ms. Whitley said that the detention pond should allow for sediment buildup. Foot traffic through the swale would cause problems. She wanted spruce trees noted better on the plan. Also, the "School Bus Stop" sign should be replaced with one reading "Dangerous Intersection," because the dangers run beyond school hours. She referred to a Quit Claim paragraph of a certain deed stating who had the rights to use the right of way, which she wanted to have looked into because it indicated ownership and certain permitted uses. Robert Withington then said that his deed indicates that he owns the 25 ft-wide strip. He had seen the Cowenhoven's deed, and there was nothing about their using the strip in that deed. He said he would look into researching it.

Mick Cowenhoven spoke next. He thanked the Board and the Chairman for the productive meeting. He and his wife did not consider the plan a satisfactory plan, and they were disappointed in the Planner's recommended approval. He objected to Chairman Glenn Farrell's refusal to allow public comment last July under the belief that the matter wasn't ready for discussion at that time. This was unfair, said Mr. Cowenhoven, because the Applicant and Board were allowed to discuss the matters at the meeting, but the abutters were not. He objected to the way things had turned out. Not only is the plan new, but also the membership of the Board has changed, and the new members might think of a different way to approach it with a full review, he pointed out.

Mr. Cowenhoven brought up the traffic safety issue, again. When turning left into the property from town, there is no way of knowing what is coming up behind. The turn when driving from South Berwick is also difficult, because the driver is not sure of what is coming over the hill. He mentioned sheet flow and other road hazards, but mostly emphasized that there is too much development on the property. Anne Cowenhoven then said that she does not want any loopholes shrugging responsibility, if there is damage to their property.

No one else stood to speak, so Dave Marshall closed the Public Hearing. Torbert Macdonald brought up the pedestrian access within the drainage way. Bill Anderson said that since the full 25 feet are not needed for drainage, the swale and path could coexist. However, the applicant was not proposing to maintain the path, or even build a walkway, because it would not have high volume traffic. Mr. Macdonald pointed out that the foot traffic would create erosion, and he suggesting putting a strip of crushed stone along the upper edge. Mr. Munro stated that the homeowners' association bylaws would have to say something about their rights to the right of way.

Mr. Macdonald asked which test pits would be utilized for septic systems on Lots 6, 5, 4, and 3, emphasizing that effluent must be kept away from the river. Barrie Munro suggested that 75-ft. setback from the detention pond should be required as a plan note. Torbert Macdonald thought perhaps mandating that the test pit farthest from the river or the detention pond be utilized. Mr. Anderson said that his client intended to use the best test pits in determining which would be chosen.

Dave Marshall brought up the issue about the "right" (current) plans getting into the hands of the abutters. He asked the individual board members if the changes that occurred, though minor, impacted the abutters to a disadvantage. Torbert Macdonald said that out of fairness to the Whitleys and the Cowenhovens, it would be less than fair if their engineers did not see the revised plan. Barrie Munro said that the changes have a favorable impact on the plan. Despite the miscommunication, the changes are representative of what the abutters have wanted to change. The approval of the different Fire Chief, Police Chief, and Town Engineer usually means that things are resolved. Al Bibb said that nothing was notable, except that an engineer might say

something like that they had not gone far enough by lowering the pond one foot, or something like that. The purpose of the Town Engineer was to solve discrepancies between different engineers, anyway. Mike Estes said that he didn't see that any changes requested in Mrs. Cowenhoven's letter that were different than what has happened, but was concerned that her engineer did not get to see it, though things would not change even if the engineer did look at it. Dave Marshall then asked if the board could consider the final review, considering the changes in the plan. Everyone agreed, except Torbert Macdonald, who said, "I can't really say."

The guardrail was then discussed. Barrie Munro said that if there has to be a guardrail, a wooden guardrail would make the abutters happier. In his subdivision, there had been a sturdy, wooden one for 15 years, placed in at a nominal cost, and most likely to last for another 15 years. Al Bibb said that the speeds will be low along that road, and that eventually the town will maintain the road. He agreed to go along with the wood guardrail. Torbert Macdonald also agreed with wood, citing safety as the key issue, with the need to prevent a car from going into the ravine as the main point.

Signage for the intersection of Route 91 and Old Mast Road was discussed. Steve Burns brought up Ginny Whitley's suggestion that "Dangerous Intersection" replace the proposed "School Bus Ahead". He showed the different signage and suggested a more visible color. Mike Estes thought that the speed limit should be lowered to 25 MPH. Steve Burns said that to shave down the crest of the hill, which had been proposed, an application needed to be made to the State DOT, which might get around to doing it in a few years.

Torbert Macdonald brought up the depth of the detention pond, saying that a bar should be placed over the drainage pipe to keep domestic animals and children from inside it. He also suggested fencing the area, to prevent drowning. Mr. Burns and Mr. Marshall disagreed with Mr. Macdonald about the fence, as did Mr. Estes. However, Al Bibb agreed with Torbert Macdonald about both the fencing and the placement of bars over the opening. Bill Anderson said that he could agree with the bars, not the fencing.

Al Bibb said that he did not get a complete answer about the curbing on the edge cul-de-sac catch basin brought up by Ms. Whitley. Bill Anderson showed how the area in the center of the circle collects a small volume of water, creating no need to do anything special for drainage. What is outside that area is diverted. Barrie Munro verified that the area would not have an erosion problem, and that curbing was not necessary. There was a 10-minute break.

A motion was made. Barrie Munro moved to waive the 2-step review process of Article 5.3.1. Al Bibb seconded the motion. The motion passed 3-1, with Barrie Munro, Al Bibb, and Dave Marshall in favor, Torbert Macdonald opposed, and Mike Estes abstaining.

Al Bibb brought up the commercial potential for Lot 7 and its likelihood for increasing traffic, if the lot were to become an antique business, or the like. He said there were no restrictions that the lots be just residential. Home occupations were allowed. Steve Burns said that retail is not a home occupation. Barrie Munro said that Class 3 allows for three employees in 1600 sq. ft of business, and that Class 2 allows for 1 employee and 800 sq. ft. of space. Mike Estes said that the lot was sensitive as far as the traffic coming out onto Route 91 was concerned. Steve Burns said that the driveway on and off that lot was onto Old Mast Road, instead. Torbert Macdonald said that if the homeowner occupation could take place in the barn, it would be okay.

Mike Estes brought up the maintenance of the retention pond and the idea of limiting the septic and test pits around it. Torbert Macdonald said that he wished to see that the test pits close to the pond would not be used, at all. Steve Burns gave his recommendation that before the plans would be signed, the builder would have to show where the septic systems would be. Dave Marshall reiterated that septic systems should be far away from the retention pond. Ms. Cowenhoven said that there is a required distance in the plumbing code and that distances must conform

to that requirement. Bill Anderson agreed that placement would be shown on the Mylar that is to be signed.

Mike Estes asked about the plan note for the deed easements over the drainage area and the walking trail. Barrie Munro said that conditional review of the bylaws would also be required. Steve Burns said that he did have covenants and restrictions but not the homeowners' bylaws.

The path was discussed again. Dave Marshall suggested that when the swale is put it, it could be configured so there is a high section that will be accessible as a footpath. Torbert Macdonald suggested that proper grading would offset it and allow it. The homeowners should maintain it. Ms. Whitley asked if there would be boats stored there. Al Bibb recommended no overnight storage of river craft.

Torbert Macdonald said that it would be appropriate to prohibit pesticides and herbicides. He said that he was sorry that the subdivision was being passed. The standards brought to the land and the sensitivity of the river called for a hydrology study that should have been done and was not. The poor soils and their ability to carry the capacity of the burden being put upon it was comparable to the development in Cape Neddick, where there is more building than the soils can take, he said. The guidance offered should have been suitable for development, but not at this level. It never should have come to this. Dave Marshall told Torbert Macdonald that he had made a good point that should be explored in the next workshop.

Al Bibb moved to recommend the application it as a final plan for review. Barrie Munro seconded the motion, which passed unanimously, 5-0.

Barrie Munro then moved to approve the final plan and submit it as discussed and amended. The final plan was to include the first four plan notes from Page 2, plus notes regarding underground utilities and lawn fertilizer, as discussed. The condition to maintain a minimal path to the river (Plan Note 15) was also amended, as was Plan Note 20 to require HDC to check for grave shafts. Specific instruction that the pond area not be mowed, and that guards be added on the culvert were also included in the motion, as was the condition that the material of the guardrail be changed to wood. A change in the sign package for it to read "dangerous intersection ahead" was included. The correction of the owner's name to Robert Withington, only, on all sheets was also part of the motion. Specification of the approved test pits and receiving areas will be a required part of the plan. As indicated in Plan Note 25, there will be no overnight storage of river craft on parcel A. Also, the applicant will settle final bills for contract engineering. Al Bibb seconded the motion. Barrie Munro amended his motion to include the Findings of Fact. Mr. Marshall called the vote, which passed, 4-1. Torbert Macdonald voted against the final plan.

Dave Marshall stated that the Planning Board's role in the review, having rejected the application once and then having accepted it that evening, was strictly based on the Town's Ordinances, without personal decisions. The meeting adjourned at 10:40.