

York Planning Board
Thursday, August 23, 2012, 7:00 P.M.
York Senior Center

Call to Order, Determination of Presence of Quorum

Chairman Todd Frederick presided. A quorum was determined with four people voting: Todd Frederick, Torbert Macdonald, Jr., Lew Stowe, and Dave Woods. Alternates Tom Prince and Dave Glazebrook were absent. Community Development Director Steve Burns represented staff. Patience Horton took Minutes. The chairman noted that the meeting would be run according to the Planning Board Article 5 Bylaws.

Keitts Point Access, 205 Beech Ridge Road/18 Claude McIntire Road; Map & Lot: 0086-0036 and 0086-0031-D; application for a Shoreland Permit for road construction and a Special Use Permit for the Resource Protection District.

Community Development Director Steve Burns gave an overview. The applicant is David Gross. This is a Shoreland application. The house is at 180 Birch Hill Road. The proposed house is in Resource Protection. There is a road going in. He has the necessary permits. Town Planner Christine Grimando has recommended approval. We have reviewed and approved the road coming in, but this is the first time for reviewing the actual house. The area is in the York River Watershed. The review includes soil and ecologic.

Dave Gross said he is here to secure a building lot. He is in no rush to build houses. He has the permit to put in the access. The ground is level. He has to clear some trees. He has not cut one tree, but he needs to cut for the envelope. After that, "that's it." He said he is a good steward of his land. Lew Stowe said a site visit was critical.

Motion: Dave Woods made a motion to open public hearing, seconded by Lew Stowe, and passed, 4-0.

No one came forward to speak.

Motion: Torbert Macdonald said, I move that we approve the Keitts Point Access, 205 Beech Ridge Road/18 Claude McIntire Road; Map & Lot: 0086-0036 and 0086-0031-D, application for a Shoreland Permit for road construction and a Special Use Permit for the Resource Protection District. Dave Woods seconded the motion.

Vote: The motion passed, 4-0.

Sohier Park Visitor Center Expansion. 11 Sohier Park Road; Map & Lot 0029-0020. Review of a revision to a previously approved plan for an application to expand the existing visitor center

Motion: Torbert Macdonald made a motion to open the public hearing. Lew Stowe seconded. Passed 4-0.

Steve Burns said a master plan was prepared. An 800-square foot addition to the visitor center is being made. The question is, does it fit in with the current plan? The board's concern is that it works now. Is the project going in the direction recommended by the Board?

Todd Richardson of Richardson Landscaping, Oxford, Maine, is the original landscape architect for the master plan. Since the last meeting with the Planning Board, he has developed two sets of plans. One is for the visitor center expansion and takes the existing conditions. The question is how these changes relate to the previously approved master plan. The second set of drawings conceptually takes the outcome desired of the Master Plan.

Landscaper Ken Studtman showed the proposed plan to the board, using overlays to distinguish the necessary expansion and removal of existing impermeable surface. He showed the bike racks. He explained water management, including the use of infiltrating drip strips, gutters and splash pads. The building and pavement are part of the existing conditions. He showed how the master plan begins to reflect the plan being presented this evening.

Chairman Todd Frederick asked if anyone from the public wished to come forward and speak. No one did.

Torbert Macdonald was concerned about whether the pavers would be permeable. Todd Richardson said permeable pavers are not being incorporated. Torbert asked how many exit points to the ocean there are. Are there gas and oil separators? Ken Studtman said the water from the roof is clean is being handled with drip edges and downspout. Steve Burns said this is the pedestrian side of it, and gas and oil are not issues.

Todd Frederick noted that stormwater was addressed well with the overlays. The handicapped parking had been changed as requested. Dave Woods asked about grade differentials. How does the site work being done relate to the grading for the master plan? Todd Richardson said the new brickwork is in the current condition. When it is redone, the grade level will change. Changes that have to do with resetting pavers will have to be made on the plan.

Dave Woods pointed out the "concrete pad for dumpster." Parks and Recreation Director, **Mike Sullivan**, was present. He said the pad must have been removed and is still on the 2004 survey.

Todd Frederick asked if anyone in the public wished to speak. **Brenda Knapp** said that the visitor center raises money to put into park expansions. With the slow economy, it has taken a long time to raise the money for this.

Steve Burns clarified that this is a use that has to be approved by the Planning Board. The chairman asked for a motion, making sure it understood as a temporary amendment.

Motion: Dave Woods said, I move we approve the Sohier Park Expansion, 11 Sohier Park Road; Map & Lot 0029-0020, as presented August 23, 2012, with Sheets L2 and A3.1, as an interim amendment to the existing master plan and also to amend the master plan accordingly. Lew Stowe seconded the motion. It passed 4-0.

Public Input

Open to the public to address any issue other than topics scheduled for a public hearing.

Ron Nowell said that you approved the connector road, but made no notes, or signed plans, or anything. I noticed that Steve Burns just warned Dave Gross about his road, “Don’t do it until the plan is signed.”

As you all know, the road was started a long time before any plans were signed or approval given. At the last meeting, I asked about rules and regulations that the Planning Board chose to ignore. It is for the better part of the Town if Todd Frederick, David Woods, and Tom Prince should resign. The oath of office is that you will follow rules, regs, and ordinances. And you purposely avoided them.

A memo from the Town Manager says you three refused to follow rules and regulations. On Tuesday, the Municipal Building Committee met to discuss the road, and the decision was made to put it on hold while Federal and Local addressed the issues. A consultant was asked to put a restoration plan for disturbance to the vernal pool buffers and wetlands. They are on private property (Horns’).

There are things that have to go back to the Planning Board. The Planning Board hurriedly approved an inaccurate plan and survey. There are subdivision and utility issues. Again, Ron Nowell called for the resignation of Todd Frederick, Tom Prince, and Dave Woods.

Richard Smith said that a neighbor had to acquire a Shoreland permit for a 75-foot stream protection permit before they could cut trees by the Josiah River. The Shoreland permit allowed the cutting of four trees. I believe the Shoreland Permit falls into mixed use. In 8.3.2, you have to go to Ben MacDougal at the CEO office for a Shoreland permit over erosion control, and Ben would okay it. That never happened, and that might not have been put out to this day. Scott Fiorentino said you allowed stumping and grubbing, but you can’t do that. Within one week from starting, any buffers have to be stabilized.

At the meeting when you approved preliminary, Rob Yandow wanted to cut trees. He went to Ben for a Timber Harvesting Permit, but then he saw loggers in there. He went to Ben MacDougal and asked, is it legal? Ben says you can’t do anything.

What part of the subdivision regs gives the applicant the right to clear before final approval? If you can’t tell me, he said to the Board, I’ll talk to Steve Burns about it.

Board Chairman Todd Frederick responded to Richard Smith, saying that the Board did not give the Town the authority to cut.

Board member Torbert Macdonald responded that there is no authority for the Planning Board to authorize timber harvesting. The Board would not have given permission because they don't have authority to do that. He explained that he wasn't here [for making that decision].

An email from Tom Manzi was reviewed. Summarized here, the email asks that after the Planning Board has granted final approval for an application, what legal or procedural recourse does the Planning Board have? The abutter have? Or a citizen have?

Torbert Macdonald said the abutters have 30 days to respond to Tom Manzi's inquiry.

Preference Votes

Preference votes for ordinance amendments to be sent to the voters in November.

Motion: Dave Woods moved we forward Civic and Public Use changes to the Board of Selectmen. Lew Stowe seconded the motion, which passed, 4-0.

Motion: Dave Woods moved we forward the Dimensional Requirement for Non-conforming Lots amendment to the Board of Selectmen. Lew Stowe seconded the motion, which passed, 4-0.

Steve Burns said that the ADU amendment is not being forwarded to the Selectmen. We did not have a chance to sit with them face-to-face. It was agreed by both boards to get together when possible, he said. The Planning Board needs a work session on this.

Field Changes

Barrels Grove Subdivision—Minor changes

Bill Anderson said the changes are at the entrance onto Beech Ridge Road. The roads don't really meet at a 90° angle. Duane Jellison came to an agreement to realign the road and make a nicer intersection. We had to create some retaining walls. Duane and I bought land in sections. He bought land along to road and changed the entrance. The biggest difference along the road is the retaining walls. The main entrance is at a 90° alignment. Duane has all the titles.

Torbert Macdonald asked if all the paperwork is on file with the Town and the deeds are recorded. He noted that the plan sheets are not certified.

Motion: Dave Woods moved that we grant the filed changes for DLJ Corp on the condition of receipt of the deeded access for the road crossing and certification of the plans. Torbert Macdonald seconded the motion, which passed, 4-0.

Minutes

The Minutes of August 9, 2012 were reviewed. Changes were requested

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Motion: Dave Woods moved we approve the minutes of July 19, 2012. Torbert Macdonald seconded. The motion passed unanimously.

Business

Lew Stowe said he is going to make a motion for board consideration. He said that in order for us to move on this project, I think it would be beneficial and important for us to go forward, and I have concerns about that. There is a process where we can change our vote. The vote would be reconsidered by two of the members who actually approved it. In addition, it is important that we rescind the vote.

Steve Burns said that any board member could raise a motion to rescind. It undoes it. Roberts Rules says in Section 35 that the key piece is it has to be rescindable. I called Sue Pilgrim at MML. She would not give great depth of detail, but ran through the basics. Unless there is a process under which the appeal cannot be made, during the appeal period, you might be able to rescind an approval within 30 days.

The surveyor showed you a plan you based your decision on, Steve Burns continued. It doesn't matter from a legal perspective. You relied on a professional. There is no contradictory survey that says it is wrong. At the Route 1 end, there are cutting violations. That is not in your purview to address. It is a State matter. The State permits were okay.

The general contractor cleared the buffers. The vernal pool west of the police station is in violation. They destroyed the pattern of vegetation the further they drove through. The stockpile is within the Shoreland. It has to come back to the Planning Board. The survey is flawed. There is a right-of-way that has to be shown properly. The land ownership pieces were not correct. The buffers have to be redone.

Lew Stowe said he has outstanding issues that will mean going down every line item.

Torbert Macdonald said that our ability to rescind is not based on 18.8.5 in the Zoning Ordinance. We have jurisdiction placed on this by the State. The condition of Natural Resources Protection permit says that any violation rescinds the permit. Who it is that is going to penalize the Town is still open. We would institute a process as a reconsideration of this plan. We will be doing that at that time. In Site Regulations, in addition to the inspection and certification for design professionals, the board can hire its own professional engineer with no enforcement authority, authorized as requested.

Lew Stowe said we should do the site walk. There are key items that he has questions on.

Todd Frederick said that the majority of the Planning Board members approved based on information they didn't have. There were inaccuracies on the survey. The contractor went beyond the plan. It impacted vernal pools. The decisions and votes reacted to the information we received and applied to the ordinance.

Dave Woods said that in preparation of the motion, he specifically said that these are stamped documents, and that some person's neck is on the line. Look to the engineer and the surveyor.

Torbert Macdonald said there was certain Preliminary Plan work. Rob Yandow said he had permission to clear the road. The CEO refused to get involved and not enforce. When it comes back, we have to take it step by step. At the final approval, it was clear that what we were setting was out the window. That is why we are where we are now.

Dave Woods said we were presented a plan. In the plan they met the land. Some zealous group of people had a field day. That is not what we were dealing with. Lew Stowe said that if we had gone through all the line items, we would not be in this position. What is the role the Planning Board has after the approval?

Motion: Torbert Macdonald said, I move we request the CEO to investigate and enjoin the violations of Subdivision and Site Plan regulations per MRS 30-A Section 406 and report back to the Planning Board on entire town site. Lew Stowe 2nd.

In discussion, Torbert Macdonald said the CEO should begin an investigation into the failure of the Subdivision and Site Plan Regs. If you don't get it going, you don't get to that point.

Todd Frederick said both projects have stopped because of the violation. Steve Burns said the citation says the Planning Board has until the end of the month. The survey is faulty, and there is no land swap with Horn.

Todd Frederick said the important thing in the investigation is to have a third-party engineer, someone who isn't interested in the project to date. It goes back to land use. They may enjoin. We should ask Steve Burns to begin an investigation. He has prosecutorial discretion on how to pursue the violation.

Motion Amendment: Todd Frederick said that the process would need to be followed and dollars secured whether or not we need to have a third-party look at the record and determine what was wrong in the process.

Torbert Macdonald said the whole project was underestimated. Potential income was lost. Corners were cut.

Steve Burns said the information would be in the form of a written report that goes over the regulations and explains what the issues are. He expects a lawsuit over this. His goal is to make sure the project is salvageable and to make it right. He is going to report to the Planning Board.

Dave Woods said the police station has to be built and within budget.

Move the Vote: Torbert Macdonald moved to move the vote. Lew Stowe seconded. The motion to move the vote passed, 4-0.

Vote: The motion to request the CEO to investigate violations of the Subdivision and Site Plan Regulations passed, 4-0.

Motion: Lew Stowe moved that we rescind the final approval on the connector road. Torbert Macdonald seconded the motion for purposes of discussion.

In discussion, Lew Stowe said that we were restricted. I am afraid we are going to be restricted not to look at everything.

Steve Burns read an email to Andrew Johnston telling him to come to the Planning Board and fix the plan with an amendment. He needs to come in and have face-to-face communication with the board, said Steve Burns.

Vote: The vote to rescind failed, 2-2.

In Other Business

Steve Burns said that the Selectmen are interviewing people for the Planning Board position.

The Planning Board members then signed The Stonewall Kitchen Findings of Fact and Mylar.

A sketch review site-walk for a 33-lot subdivision off Logging Road, which is being proposed by Duane Jellison, will be held Tuesday, September 11, 2012, at 1:00. The land is a big back lot.

The meeting adjourned.