

**TOWN OF YORK PLANNING BOARD  
THURSDAY, MARCH 9, 2006, 7:00 PM  
YORK PUBLIC LIBRARY**

Chairman Barrie Munro began the meeting at 7:00 by introducing the board and the staff. Barrie Munro, Richard Smith, Glen MacWilliams, Tom Manzi, and alternate Lee Corbin were present. Glenn Farrell was absent, and Barrie Munro asked Lee Corbin to vote in Glenn Farrell's place. 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 issues scheduled for public hearings on this agenda.**

No one came forward to speak.

**Requests for Field Changes.** Decide on requests from previously approved applicants.

Steve Burns said there were no requests for field changes.

**Application Reviews and Public Hearings**

**Atlantic House 2 Beach Street, 4 Main Street, and 7 Main Street. Map & Lot 0024-0044, 0024-0043-A, and 0023-0008. Reconsideration of the Board's decision about hours of operation of the restaurant.**

Barrie Munro explained that on February 21, the board gave conditional approval for the Atlantic House. After the vote, the applicant asked the board to that a last minute request for inclusion of the following plan note.

- Restaurant to open no earlier than 11:00 A.M. and stay open no later than 1:00 A.M., without restriction. From June 15 to Labor Day, it will be restricted from serving functions during the hours of 11:00 A.M. to 3:00 P.M. unless off-site parking is secured in advance of booking function.

The request had not been included during the business of a public hearing. During the February 23 meeting, two days later, the Planning Board elected to reconsider the motion.

Barrie Munro opened the public hearing. Cathy Goodwin of the Greater York Region Chamber of Commerce and spokesperson for the York Beach Renaissance Committee told the board that there is no parking problem in York Beach. Two restaurants had closed that, combined, required about the same amount of parking anticipated for use by the restaurant at the Atlantic House, which she referred to as a "swap." Barrie Munro asked her if she was motivated to speak about the parking because she thought the condi-

tional permit for the Atlantic House might be reconsidered, or if she was speaking in support of the plan note. She answered that no restrictions should be placed on the restaurant.

Steve Burns commented that the Renaissance Committee is a subcommittee of the Planning Board, and he wondered if it was appropriate for the subcommittee to testify to the board. Discussion led to a general sense that any communication by that subcommittee should be public knowledge.

Charles Stacy of Radon Road Ext. said that the Atlantic House should have the same hours as any other restaurant at the Beach. Representing Atlantic House, Peter Dunfey said that a few minutes before the meeting, he had passed out an additional plan note he wished to have considered. Barrie Munro said that the new note would have to be posted for a future hearing date. The board would only entertain the original submission. Barrie Munro read a letter from Brent Merritt of the Union Bluff. It said that Atlantic House should pursue offsite parking in the event of a summer function, as Union Bluff will do.

Glen MacWilliams said that the applicant had not given the board any information to use in reconsidering the request to change the hours of operation. Steve Burns said that the parking and traffic analysis submitted by the applicant engineer was for an evening-only restaurant. The change to different spring, winter, and fall hours caused the reconsideration. Barrie Munro added that there is no substantive parking data for that period. Peter Dunfey acknowledged it was an issue with the process that caused the reconsideration of the motion. Barrie Munro alluded to Rule 37 in *Robert's Rules of Order*. Reconsideration could be due to a hasty, ill-advised, or erroneous action. On the 21<sup>st</sup>, there was a lack of public input, and there was a hasty action on the part of the Planning Board. Peter Dunfey rebutted that the plan note was in consensus with the abutters and had no objections.

Glen MacWilliams suggested that the applicant return with a field change request for a change in hours of operation. Barrie Munro explained that the board was apparently uncomfortable about agreeing to the change without further input about the new hours of operation.

**Motion** Glen MacWilliams moved to not accept the plan note change, initially presented on February 21, 2006. Richard Smith seconded the motion.

Cathy Goodwin asked if the public hearing was still open, and it was apparent that it had not been closed. She said that the board was considering not accepting the proposal and limiting access to the facility year round, even when every parking space in York Beach is empty. She asked what data would be needed to prove that there would not be a parking problem. Barrie Munro answered that the month of June and the time immediately following Labor Day were the issues. Cathy Goodwin said that her Renaissance Committee had given the board what they needed, data about meter usage and previous restaurant closures. Steve Burns answered that the Planning Board did not ask the York Beach

Renaissance Committee to do a parking study, but rather consider design standards. The information the board seeks is from the engineer. Chairman Barrie Munro closed the Public Hearing. Glen MacWilliams clarified that the board was asking for documented parking data based on the times during which the longer hours were being requested.

**Vote** The chairman called the vote not to agree with the change that was proposed by the applicant at the end of the February 21, 2006 meeting. It passed, 4-1, with Lee Corbin voting against the motion.

Patrick Simpson asked if he could make a comment. Barrie Munro told him it had to be brief. Patrick Simpson works at Caption Sullivan's and/or Gabby's on Short Sands. He had made a conscious observation of parking lot usage during June and July, last year, in order to gauge when to tell his employees to park elsewhere, leaving spaces open for the public. After Memorial Day, his business averaged \$4,000 a day, he said. Business shot up to \$12,000 a day during and after the July 4<sup>th</sup> holiday weekend, which was when he told the employees to move their cars.

Don Rivers, developer of the Atlantic House, asked if his matter could be on the agenda for the next meeting. Steve Burns said that the applicant could apply for an amendment, have full information prepared, and get into the queue, unless the board was to say the applicant could come to the front of the line. Barrie Munro added that the applicant would have to present a formal submission. Steve Burns said application forms were available at his office.

**PHN Homes, LLC—Pine Hill Road North Subdivision 64 Pine 64 Pine Hill North. Map & Lot 0001-0002. Consideration for Final approval of the subdivision.**

Barrie Munro said that preliminary approval had been granted in October, 2005. He went through written comments by Donna Tippet of the Southern Maine Regional Planning Commission. Steve Burns said that the plan for this 5-lot subdivision was unchanged since preliminary approval. The details had been worked out. Town engineer Steve Bradstreet, had signed off, and everything was straightforward. It is a tough site, steep and rocky. A 3-week pre-blast notice is expected. Financial security had been posted.

Developer Bob Satter went over details. The subdivision is on sewer and water. The road is private. Its name has been changed to Tree Top Lane. He has letters of approval from KK&W and from the Ogunquit Sewer District. The stormwater management plan was approved. There will be less runoff after development than there is now. A tree along the road has been removed, so the sight distances in both directions is 500 feet, whereas 250 feet are required. Culverts and drainage management has been drafted. The sight distances and the culverts were concerns of Bill Bray, but no longer. The amount of blasting is reasonable and not extensive. Three weeks' notice will be given before blasting. Plan notes suggested by Steve Burns and Donna Tippet have been incorporated. The concerns of the neighbors have been met.

Chairman Barrie Munro opened the public hearing. Ann Collier owns land with her husband, Marvin Collier, and lives across the street at 84 Pine Hill North. They also have four acres on the Ogunquit side that is contiguous to Bob Satter's property. She said she is concerned about traffic. Pine Hill North is a quick way into Ogunquit, and people travel faster than the speed limit. She asked for a vegetative buffer between their properties. She asked how she would know that things are being done as they should be done. Steve Burns answered that there is a retired engineer who will be out there just about every day, checking. Ann Collier asked how long the project would take, and if the developer will build the houses, or sell the lots.

Bob Satter said that the improvements, including blasting would take four months. After that, there will be seven years of building, the first house, his own, during the summer of 2007, and then, after that, one house a year. He will custom-build them. His own engineer will be overseeing the project, to make sure it goes right. He said he did not foresee the subdivision traffic would increase the traffic anywhere near the road's potential of 1,000 cars a day. To help slow the speeding, he had already offered to place a sign at the top of the hill.

Bob Satter continued about the adjacent, vacant lot, owned by the Colliers. There is a lot of vegetation there, he said. He suggested the Colliers put in 12 ½ feet of buffer that he will then match with the same amount on his side of the property line. The discussion went to the culvert on the west side of the road. Ann Collier asked if trees will come down to make way for it, and Bob Satter answered no. He said that the dynamiting would depend on when final approval comes. Dynamiting and paving the road will be either before or after the summer, but not during.

Landscaper Thomas Lovejoy spoke on behalf of the Colliers. The developer should replace the vegetation that is removed. Because there will be a big opening caused by the entrance road, the character of that area will be changed, so there should be a buffer hiding it. Abutter Marvin Collier then said he agreed that since Bob Satter is the developer, he should be responsible for the buffer.

The chairman called for the following two motions.

**Motion** Richard Smith moved to accept the application as complete for the purpose of final review. Glen MacWilliams seconded the motion, which passed, 5-0.

**Motion** Richard Smith moved for a waiver of Subdivision Regulation 6.3.1, allowing the scale to be changed on the plan so the plan fits on one sheet. Tom Manzi seconded the motion, which passed, 5-0.

Ken Wood of Attar Engineering said he had requested a waiver allowing the road width to be 24 feet wide for the first 100 feet, and then 20 feet wide the rest of the way back. He also discussed the buffering for the property line. The placement of the private road goes along the property line adjacent to the Colliers' vacant acreage because the grade of

the land dictates it. The proposed vegetation is deciduous, he said, though Bob Satter would be in agreement with any of the board's wishes regarding buffer materials.

**Motion** Glen MacWilliams moved to waive 8.2.6.3, the access road width. Lee Corbin seconded the motion, which passed, 5-0.

The board discussed buffering and what would be appropriate to this application. They suggested a varied landscaping lush with trees and under story. Thomas Lovejoy asked for the buffering to cover a distance greater than 75 feet. Glen MacWilliams pointed out that that far in, the landscape turns to wetland, and buffering beyond 75 feet is not necessary. Bob Satter said he would see that the landscape architects from both properties get together to discuss it.

The Covenants, new plan notes, the blasting plan, tree removal, the setback requirements, and floodplain were also discussed. York Beach Fire Chief Dave Bridges had confirmed that the hydrant flow would meet 750 gallons per minute, and that the road would be suitable for emergency vehicles. There are plan notes about maintenance of drainage swales and culverts. Barrie Munro commented that the applicant's impact statement was the best he had ever seen as planning board member.

Glen MacWilliams asked that the pages be numbered correctly.

**Motion** Tom Manzi moved for final approval of the application with consideration for proposed changes about buffering and page numbering,. Glen MacWilliams seconded the motion, which passed, 5-0.

**York Storage Solutions—Arenhall Corp. 1950 U.S. Route One. Map & Lot: 0100-0029. Application to raze the former Elks Lodge and construct two large storage buildings.**

Barrie Munro said that the application was found complete for purposes of review on December 8, 2005. Ken Wood of Attar Engineering said that at that meeting, building types and materials had been discussed, and the board was in agreement to the building shapes, the pitch of the roof, and the sidewall materials. The main concern was over the asphalt access aisles located within the setbacks, which were revised and corrected. A small office building had since been added. The landscape plan had been updated.

Barrie Munro opened the public hearing. Charles Stacy asked what will be visible from the road and how high the buildings will be. Ken Wood answered that they will all be one-story buildings. The Elk's building will be torn down. The chairman closed the public hearing.

Barrie Munro referred to the February 14, 2006 review from Donna Tippet, Land Use Planner with the Southern Maine Regional Planning Commission. It included an observation that pole lighting had been removed to lessen the glare. Her review also noted that

the DEP Stormwater permit was not required, which Ken Wood explained was because the impervious surfaces totaled less than one acre (.67 acre), exempting it from the requirement. Barrie Munro commented that the board could waive that 6.3.8.6 requirement. Ken Wood also said that the existing elevation and upslope caused by grading within 10 feet of the property line would not create an impact on the abutting property, owned by Young.

**Motion** Glen MacWilliams moved to waive 6.3.8.6. Tom Manzi seconded the motion, which passed, 5-0.

The landscaping of the buffer yards was discussed. Ken Wood indicated the location of the 20-foot right of way. Landscape architect Robbie Woodburn of Woodburn & Company discussed the existing and proposed additional trees, a mix of Oaks, Ashes, Pines, and Spruce. She showed how the entrance also would be buffered with a mix of trees. Tom Manzi asked about security and specifically the chain link fence. Ken Wood described a 6-foot chain link fence that would not be screened. Barrie Munro said that the fence should not be seen when one looks into the property from the road. They decided on the color black for the chain link. Ken Wood said that the automatic gate would slide. Looking at the plan, Barrie Munro commented that it would be hard to look up the hill and see the big building because of the planting and the little building.

The water source was discussed. Barrie Munro said that due to 6.3.12.1 (Water Supply), the applicant must tie in to the York Water District, unless there is good reason not to. Ken Wood said that he was not sure where the existing septic or well is located, but the new well will have a 100-foot protective radius around it. Glen MacWilliams said that the applicant had not shown that there is water. Ken Wood responded that the Elks currently have water. Barrie Munro said that the section could be waived.

**Motion** Richard Smith moved to waive 6.3.12.1, giving the Planning Board the right not to require public water. Tom Manzi seconded the motion, which passed, 5-0.

The building design for the new office was discussed. Ken Wood showed the plans and the front elevation for the office and said the materials are horizontal clapboard and asphalt shingles. The lack of certification was discussed and solved. Glen MacWilliams said that the building is small and will only have one occupant. The plan might not need certification, or perhaps Ken Wood could certify it. Jonathan Hall showed the board samples of the building materials for the office building. Tom Manzi asked if the buildings are heated. Jonathan Hall answered that only the 20x25 foot office building has heat.

The performance guarantee will be provided as a condition of approval, said Ken Wood. The parking aisles are such that trailer trucks and fire trucks can get around the buildings, but Fire Chief Bridges had not seen the current incarnation of the plans. Steve Burns commented that police, fire, and public works signoffs would be part of the conditional approval, water no longer being necessary. Barrie commented that the impact caused by

vehicle trips to the site should be of no great consequence. Curb cuts must be well engineered. Glen MacWilliams asked about the sheet index, which was missing. As well, Sheets 2, 4, and 5 were not there. Ken Wood answered that since they were not revised for the hearing, they were not reissued. Barrie Munro asked for an as-build plan.

Steve Burns listed off the precedent conditions for conditional approval, including the correct revision date on the landscape plan, the chain link fence being black, Ken Wood's certification of the office building design, signoffs from the three department heads, the added sheet index, and the inclusion of the financial security note.

Barrie Munro said that the applicant could expect approval when they return with the mylar. Steve Burns said that he would put it the matter an agenda without a public hearing, so it can get finished. Referring to Zoning Ordinance 8.2.5.3, Permit Issued by the Planning Board, Barrie Munro asked if **Items a.** through **m.** were complete. Ken Wood said they were checked at the last meeting. Ken Wood asked if the mylar could be signed at the next meeting, and Barrie Munro answered that it can as long as everything is complete.

**Passaconaway by the Sea 1780 U.S. Route One. Map & Lot: 0100-0027. Consideration of Preliminary Application Acceptance and/or sketch review of proposed development subdivision and hotel**

Seth Spiller, partner in Passaconaway by the Sea, described the proposed 250-unit elderly housing community with hotel, two commercial parcels, 13 additional dwelling units, plus an eight-acre house lot for 3-unit multi-family homes. The location is in the Route 1-6 zone. The Comp Plan and ordinances require public water and the extension of public sewer due to the density of the community.

Chairman Barrie Munro opened the public hearing, and applicant attorney Bill Knowles came forward. He said he hoped the board would concur with Land Use Planner Donna Tippett, of the Southern Maine Regional Planning Commission's paragraph about completeness of the plan set, located in her Memorandum to Steve Burns, dated February 23, 2006. Bill Knowles read part of a paragraph aloud, "The applicant did an excellent job putting together the plan set and supporting documentation . . . . If the Board approves the waivers requested below I would deem the application complete."

Bill Knowles then referred to what he described as a "glitch" caused by the Board of Selectmen, who deemed that the sewer plan would not be compatible with the Comp Plan. He went over the content of seven documents he had indexed and presented to the Planning Board, including a letter from Timothy Haskell, Superintendent of the York Sewer District to applicant Seth Spiller, which stated that the District has the capability to treat the flow from Passaconaway. A later correspondence from Timothy Haskell to Seth Spiller, Tab 2 of the series, dated March 1, 2006, said that the Board of Selectmen's finding that the extension was not consistent with the plan made it so that the sewer extension may not be allowed. He also read from a Memo from Town Planner Steve Burns saying,

among other things, that in light of the Selectmen's decision, the application cannot be considered without the written assurance from the Board of Selectmen. It was questionable whether the preliminary plan could be considered complete.

Bill Knowles said that Timothy Haskell's written requirement confirming the capability of the Sewer District should make the preliminary plan complete. The Planning Board could also determine the plan as complete conditional to a letter from the Board of Appeals or the Superior Court saying that the selectmen erred, he suggested. Such a letter would put the application on hold, and no further appeal would be necessary. The very best case scenario would be to approve the preliminary plan and take no action for further review.

Seth Spill spoke next, alluding to a Memo from Steve Burns to Town Manager Robert Yandow, dated February 27, 2006, Tab 4. Bill Knowles said that the memo indicates there are areas in which the proposal is consistent with the Comp Plan. Bill Knowles said again that the selectmen erred, and that the sewer extension is consistent with the comp plan.

Barrie Munro read a letter received from George H York, Jr., of Pine Hill Road, who wrote that he disagreed with the selectmen's decision against the extension and that the Comp Plan encourages the extension. The extension will cause savings on taxes, with the developer paying for it, and it would provide efficient uses of public services.

Barrie Munro turned to the Town Charter, Page 27, about Planning Board duties. He read that the board would not speak for the Town, unless a policy to do so had been adopted by a sanction of Ordinance, the Board of Selectmen, or by the Charter. Barrie Munro reiterated that the application could not be considered complete under §6.3.24.1, because the sewer district had been denied written assurances from the Board of Selectmen.

In discussion, Richard Smith said that the selectmen decided that the sewer is not allowed in the Route 1-6 zone, and there was no sense in going ahead. Lee Corbin said that she would take the opposite tactic, citing Attorney Bill Knowles's strong argument that the missing link for a complete application is already in the planner's files, the original letter from Sewer District to Seth Spiller saying that they have the capacity to meet the criteria of §6.3.24.1. Tom Manzi referred to the final sentence of Steve Burns's February 27 memo to Robert Yandow, that "it would be premature for the Board of Selectmen to make this decision until the application is filed and the review is complete." Tom Manzi commented the Planning Board had been preempted. Barrie Munro commented that the board was, instead, "overruled." Steve Burns said that his quotes were being taken out of context, and that the selectmen's position was that the sewer line, not the project itself, was inconsistent with the Comp Plan.

Glen MacWilliams said that the sketch review had not been finished. There was no preliminary plan, and there was no sketch review. The cart was before the horse. Referring

to a sketch plan list with utilities as the ninth item down, Tom Manzi said that the review had not even gotten to that point yet. Steve Burns clarified that the applicant had recently come into his office with an application package, but Steve Burns had not handed it out to Planning Board members because of the latest complication. Donna Tippet's finding it complete had predated the selectmen's decision. Richard Smith asked why preliminary approval should be sought, when the board knows that no sewer is going to that site.

Bill Knowles said that the applicant had understood that the Board of Selectmen would decide if the project would go forward. If they say so, the project is dead, he said. But he thinks that the selectmen and Steve Burns are "dead wrong" in their position, and he plans to prove it to somebody else, avoiding further contact with the Planning Board. The applicant wishes to have it considered complete, because it will take months to prove the selectmen are wrong, and after that period of time, when the application comes back to the Planning Board, it will be dead because of the time element. The applicant will be heavily penalized, if it is not complete. He asked again for the Planning Board to make it complete, subject to the idea that the selectmen have erred.

Tom Manzi summarized that the applicant attorney was asking the Planning Board to give the opportunity to conditionally accept the plan either that evening or the next. Chairman Barrie Munro asked for a motion with regard to 5.3.6 to move the matter forward.

**Motion** Lee Corbin made a motion. She suggested incorporating the February 27 memo from Steve Burns to Robert Yandow with the plans that had been submitted to Steve Burns's office, making them part of a conditional acceptance, which would make the fact that the selectmen had said that the sewer would not go to the site irrelevant to the Planning Board's position. **There was no second to the motion.**

**Motion** Glen MacWilliams moved that in accordance with 5.3.6 of the sub-regulations and in addition to §6.3.24.1, the conditions requested by the applicant for the preliminary plan cannot and have-not been met, because the Selectmen made a determination of MRSA Title 38 §1252(7)(A) that the Sewer District will not be expanded into the Route 1-6 zone at this time. Richard Smith seconded the motion, which passed 4-1, with Lee Corbin opposed.

### **Minutes. Review and approve draft minutes.**

Minutes were postponed to a future meeting.

### **Other Business/Adjourn.**

The Other Business was postponed. The adjournment came at 11:05.