

York Planning Board
Thursday, November 8, 7:00 P.M.
York Public Library

Call to Order, Determination of Presence of Quorum

Chairman Glen MacWilliams began the five-hour meeting at 7:05 and determined presence of a quorum. Beside Glen MacWilliams, Vice Chairman Tom Manzi, Barrie Munro, Dave Woods, and alternate Lew Stowe were in attendance. Lew Stowe was asked to vote in the absence of a fifth full member. Town Planner Christine Grimando 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.

No one came forward to speak.

Field Changes

Stephen Campbell asked to move the handicapped parking at his furniture store on Route 1. Currently, the approved plan calls for wheel chairs to navigate a circuitous route before entering the store. The new handicapped parking on the other side of the building would be a shorter, closer route to the door. The surface of the new handicapped parking area consists of hard-packed gravel. The dumpster would be moved to the back of the regular parking lot. He showed the location on a plan. The plan was not to scale.

Motion Tom Manzi moved to approve the plan change pending receipt of a revised, scale plan. Barrie Munro seconded the motion, which passed 5-0.

Minutes

Review and approve draft minutes

There were no minutes to review.

Application Reviews and Public Hearings

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

Eric Weinberg with Altus Engineering (Portsmouth) said that since the last hearing, the project had received DEP permit approval. As well, a Shorelands/Wetlands permit had been received. In the November Referendum, just two days prior, the voters had passed the zoning ordinance enabling the York Hospital's expansion.

Christine Grimando described outstanding issues listed in a memorandum she had sent to the applicant. A good deal of planning board review had been completed, but mitigation for the traffic impact and buffering along the historic properties that abut the hospital

were new issues. As well, a request for preliminary and final approval to be accepted concurrently had been received from the hospital. Applicant representative Judd Knox explained that the hospital would change asphalt parking near the Old Gaol anyway the planning board deems necessary. Hopefully, the parking would not become parallel, or too much parking would be lost. The planting in the area near the Old Gaol was planted in agreement with the Historical Society. The society wanted the area to remain open to avoid a potential problem with moisture in the Old Gaol, itself. Once again, the hospital would do whatever the York Planning Board and York Historical Society want with buffering.

Eric Weinberg then said the drainage had been reviewed, as had traffic impact. A left turn at the Lindsay Road and York Street intersection had been proposed in response to a potential traffic increase, but Public Works Director Bill Bray said the left turn was not necessary, because the situation was minor and the proposal was unwarranted.

The Chairman opened the Public Hearing. **Richard Cutts**, an abutter at 12 Lindsay Road, lives in a house his family has had for over 200 years. Over the years, he has seen several historic structures in the area taken down. He has issues with growth in the area, though today there is less noise than there was 10 or 12 years ago. During the most recent construction at the hospital, no trees were cut down on his property. A fence the hospital has put at the edge of its parking lot deters drainage onto his land. The proposed expansion will bring the new surgery center 30 feet closer to Lindsay Road. The planting that was put in around the oxygen tank took years to hide it. The hospital is the one dominating commercial operation in the center of town, and it brings in more and more sirens and ambulances. Wishing that the hospital were relocated years ago, he stressed his concern about the changing character of York Village caused by the hospital.

Kinley Gregg, also an abutter, lives between Richard Cutts and the hospital. She showed her location on the site plan. She spoke about traffic patterns. Drivers sometimes get distracted trying to get to the emergency room. The signs are misleading. Sometimes vehicles get confused as they pass the Tavern and mistakenly turn north on Lindsay Road only to turn around in her driveway and end up going the wrong way back to the hospital entrance or to York Street. She showed the board an old post card of the original York Hospital, circa 1906, when it was still a cottage. The hospital building no longer compliments the historic surroundings, she said. She also said she has concerns about the blasting. She is glad a fence will be put up so she does not have to look at parked cars.

There was no one else to speak, so the public hearing was closed. Glen MacWilliams pointed out that the Lindsay Road entrance is not being changed. Perhaps the Town can change signage to make the condition safer, something to discuss with Bill Bray. As for blasting, the abutters will be notified, and there will be a blasting survey with their participation. An ordinance prevents noise before 7:00 A.M., Monday through Friday, and the blasting will not occur before that hour. The landscaping buffer may not be adequate. Eric Weinberg said that it is difficult to landscape an oxygen tank that is 20 feet high. Though the mechanicals are adequately screen, the screening hides only about 15 feet of the tank.

Speaking about signage, Dave Woods suggested moving the signs closer and signify “turn left in 200 yards,” giving a driver instruction about how to get to the hospital. Barrie Munro said that too much landscaping might make the entrance easy to miss. Glen MacWilliams asked how the oxygen tank could become less visible. Judd Knox replied that it would be look at, as well as the signage issue.

Tom Manzi asked Eric Weinberg about the projected 2.2 million gallons used by the hospital every day, as described on the DEP permit. Eric Weinberg answered 2.2 million is a typo made by the DEP. The number it should be changed to 22,400 gallons per day, which is 1,600 more gallons the hospital already uses.

The Chairman asked the Town Planner if the application is complete for purposes of review. Christine Grimando replied that the Findings of Fact and the Financial Performance Guarantee were both missing. Eric Weinberg added that the signature blocks have been added, as requested, and the Findings have basically been written in the detailed notes that have been produced. Glen MacWilliams asked for the applicant to identify the total cost in the performance guarantee.

Lew Stowe asked about proposed drainage near the Barrels Mill Pond. Eric Weinberg described the rain garden planned to treat drainage in that area. Tom Manzi asked Christine Grimando her recommendation about the sequence of the preliminary and final plans. Christine Grimando replied the materials missing that she has already addressed (findings and financial) make the applications technically incomplete. Tier 1 term review was briefly discussed between Lew Stowe and Eric Weinberg. It was also noted that the Findings of Fact are a Final Plan requirement and are not normally part of the Preliminary Review.

Motion Barrie Munro moved to accept the submission as complete for purposes of preliminary review. After addressing the waivers, the submission could be accepted for final review. Tom Manzi seconded the motion, which passed, 5-0.

Glen MacWilliams directed the board to the waiver for §9.8.2, Storm Water Waiver Request. The water is going into the ocean, rather than the abutting property. Therefore, quantity is not an issue.

Motion Barrie Munro moved to approve the waiver of §9.8.2, Storm Water. Tom Manzi seconded the motion, which passed, 4-1, with Lew Stowe opposed.

Moving to the waiver of §9.8.12, Water and Oil Separators, Barrie Munro said the separators had been discussed at a previous meeting. If the drainage is constructed as proposed and is effective, the oil and water separators will not be necessary.

Motion Barrie Munro moved to approve the waiver of §9.8.12, the need for water and oil separators. Glen MacWilliams seconded the motion.

In discussion, Glen MacWilliams said that rain gardens will resolve the contaminate problem. Dave Woods asked if mitigation is needed to un-choke a choked rain garden, and Eric Weinberg answered that rain gardens have to be maintained according to their use. Salt and traffic density bear on how long a rain garden will last. Barrie Munro said the application plan notes should include a reference to the maintenance of the rain gardens, and Eric Weinberg said the notes are already included. Dave Woods asked how parking lots and sidewalks are treated after snow. Steve Pelletier, a member of the applicant group, replied that the hospital uses Potassium Chloride, a fertilizer that promotes growth. David Woods replied that he is not sure if a rain garden can handle growth.

Vote The chairman called the vote to waive the water and oil separators. The motion passed, 5-0.

The next waiver, §7.3, Natural and Historic Features, encompasses several different items, including architectural design, buffering of the oxygen tank, noise, land form contours, preservation of trees, screening of the houses on Lindsay Street (and other screening), and the configuration of the proposed driveway wall with its overhanging, draping plants that will virtually hide the wall. Eric Weinberg answered there is a comprehensive study in the application saying that the hospital is not impacting the area with these changes.

Christine Grimando asked if there are different implications about blasting near historic structures compared to blasting near newer buildings. Glen MacWilliams said that the blasting review, which analyses the building conditions, is conducted for any kind of structure. Steve Pelletier added that every room and every foundation is video taped to make sure every precaution is taken.

Motion Barrie Munro moved to approve the waiver of §7.3 with the provision that the plan includes the addition of a fence, or other alternative devices that are acceptable to the planning board to provide additional buffering for the neighbors in proximity to the oxygen tank . Additionally, §7.3.1 (a) through (f) will be waived. Dave Woods seconded the motion, which passed, 5-0.

Glen MacWilliams moved to the final waiver. The board would skip the zoning ordinance waiver that is not part of planning board jurisdiction. Structure height was also exempt from their jurisdiction. However, the waiver for §7.4 concerning lot coverage change has to be approved the planning board. This waiver is concerned with seasonal high water that ponds up on top of a ledge on the property before running laterally, rather than going straight down to Barrell Mill Pond.

Motion Dave Woods moved waive §7.4. Barrie Munro seconded the motion, which passed, 5-0.

Glen MacWilliams instructed the applicant to return with the outstanding items for preliminary and final approval. Eric Weinberg listed the items, as he understood them:

Performance Guarantee, Findings of Fact, a letter from Department of Public Works, Landscaping proposal for the Cutts property, and better screening for the oxygen tank.

Highland Farm Phase 2. 1 North Meadow Lane, and 250 Cider Hill Road. Map & Lot 0090-0029-A and 0090-0030. Continued consideration of preliminary review of a major subdivision.

Project Engineer Steve Haight said a letter from Applicant Attorney Jim Katsiaficas of Perkins Tompkins (Portland) detailing the standing of the application, was recently submitted to the planning office. There is more work with the Trust for Public Lands that supports the continuance of the application for another 30 days.

Motion David Woods moved to continue the Highland Farm Phase 2 application for another month. Tom Manzi seconded the motion, which passed, 5-0.

S. Blaisdell/HDV Enterprises The end of Woodside Meadows Road. Application to amend an existing subdivision plan, "Woodside Meadow Phase Two" to include a 5' X 50' easement at the terminus of Woodside Meadows Road. Discussion of Applicant's concerns about Board member impartiality will precede the application review.

Steve Blaisdell began to speak about the intention of adding a 5 X 50 foot strip of land to a piece of land known as Woodside Meadow Phase 2, which he referred to as the Kittery Pasture. Glen MacWilliams asked that the hearing instead begin with the applicant's concern about York Planning Board member impartiality. Attorney Katherine O'Connor, of Perkins Tompkins, represented applicant HDV Enterprises. She had sent a letter outlining concerns regarding participation of board member Lew Stowe, stating he had been in contact with people of interest to the subdivision and had used his role as an advocate of the neighbors. She asked that Lew Stowe be recused from both applications [this and the next on the agenda]. Her letter, dated October 15, 2007, was summarized for the record. She said that the decision makers on the planning board had to have an open mind, which Lew Stowe did not have, apparently, after contacting the fire chief, police chief, and Steve Blaisdell, all of which constitutes *Ex Parte* communication. That communication affected his opinion, and violates due process. She asked that he recuse himself from review of the application.

York Town Attorney Durwood Parkinson spoke next and agreed that board members are judges who make decisions based on the record in front of them and not according to independent observations. If there was impropriety on the part of a board member, curative steps could be taken, but first it is important to focus on whether or not there was improper conduct. There might be impartiality and judge-like conduct, or, on the other hand, by making full disclosure during the independent research, the applicant would have the opportunity to respond.

Lew Stowe was asked to speak. In the Planning Board Manual, he said, there is a directive about investigation by board members. It indicates the board should decide if

the instance could be regarded as bias with a vote. Lew Stowe described what he went through to prepare the subject document. He did not discuss it with the applicants. He went on the Internet and pulled out the documents, about 150 of them, which were relevant to Woodside Meadows. He called up filed documents using “Woodside” and “Blaisdell” as key words. He put all the documents in sequential order by date and analyzed the process. Then, with Community Development Director Steve Burns, Lew Stowe visited the Kittery Planning Office and got the minutes of their planning board meetings that concerned the application. All that enabled Lew Stowe to create a summary of documents. The whole process took about 40 hours of work. Lew Stowe said that his process evolved into asking questions, but not making conclusions. All the emails he made were copied to the other board members. He asked the York Fire Chief, Police Chief, and Town Manager if they had signed an approval. They all told him they had not sign an approval.

In a letter sent by Catherine O’Connor, Lew Stowe noticed a case citation he had tried to look up, but he could not find it, and he asked her to summarize its content. Catherine O’Connor answered that the legal citation reviewed the process of an investigation on behalf of a physician.

Glen MacWilliams asked if, seeing that Lew Stowe did not have to recuse himself, curative steps could be taken in dealing with this situation. After taking a moment to confer with her clients, who sat near her, Catherine O’Connor said that with the understanding the Lew Stowe did not intentionally violate applicant HDV Enterprise’s rights, the applicant was still not comfortable having him on the case.

Glen MacWilliams pointed out that on Page 19 of the planning board guidelines, a board member can do research such as this. He asked the board members if they thought Lew Stowe had conducted himself improperly. Tom Manzi answered that there is a potential conflict between case law and Page 19 of the Planning Board Manual. He said there was the *appearance* of improper conduct. Durwood Parkinson asked if the research was authorized, saying it sounded like there was some authorization. Lew Stowe said in the past he had done a lot of reviews like this one. The reviews involve looking for detailed histories of what transpired over the past 40-year time period. Durwood Parkinson replied that the documents that have been compiled should be made available to the applicant, including the registry documents and the emails, enabling the application to rebut. Lew Stowe said that the applicant has the impression that because he, Lew Stowe, was knowledgeable, he was leading the charge. Barrie Munro said that the questions Lew posed in his four page Executive Summary and subsequent observations during the review process led to the potential for the appearance of impropriety. When it came time to do the executive summary, as the Lew Stowe document came to be called, it tended to show weakness in the applicant’s situation and lead to certain conclusions. Tom Manzi said that the board could have been more explicit about the boundaries. He said in giving the assignment, the board did not establish the boundaries and protect due process.

Glen MacWilliams questioned whether there really was improper conduct. Durwood Parkinson said that the focus on the facts amounting to misconduct by a board member

has the appearance of being a gray area. He asked if Lew Stowe was capable of making an independent decision on this application. Registry work and work done from the Kittery office that have been turned over to the applicant eliminate an unfair advantage. There was authorization from the board to do the research. The work was not a mystery, though when there is research, perhaps it should be done and provided by the applicant. Glen MacWilliams said he did not feel there was improper conduct, and he asked the board to expression their conclusions. Durwood Parkinson recommended a board member first make a motion to the effect that Lew Stowe should be asked to recuse himself and, second, poll the board. Doing so would expedite the conclusions, he said.

Motion David Woods moved that Lew Stowe recuse himself for the reasons given. Barrie Munro seconded the motion.

As the chairman polled the board, Dave Woods said he did not believe there was malice, but he did not want an appeal to come out of the matter. If Lew Stowe sits out, Dave Woods continued, the board would have avoided an appeal.

Tom Manzi answered the poll by saying the improper conduct was on the part of the board. There was a flaw in the assignment, and yes, there was improper conduct in the end.

Answering the poll, Glen MacWilliams said there was no improper conduct on Lew Stowe's part.

Answering the poll, Barrie Munro said that although he thought there was reason for the appearance of improper conduct, there was no improper conduct. There are people who believe in the appearance of improper conduct, and that Lew Stowe should recuse himself, but based on Lew Stowe's curative statements, Barrie Munro did not believe Lew Stowe should recuse himself.

Vote The vote to ask Lew Stowe to recuse himself was turned down unanimously, 0-4, with Lew Stowe not voting.

Board members discussed possible curative steps, which Glen MacWilliams thought could be achieved because, though the integrity of the planning board is at stake, and there is potential for an appeal, full disclosure has been made. The chairman then put that agenda item aside and returned to the other part of the application.

Steve Blaisdell spoke. He had discussed every phase of Woodside Meadow with his late father, Carroll Blaisdell. The Borkowskis had come to Carroll Blaisdell, saying they wanted to buy to 5 x 50 foot strip, so they could access the property. First, Carroll Blaisdell went to the Tarboxes and offered to sell the strip to them, but they did not want it. The right of way allowed Carroll Blaisdell to reach certain lots he owned, so it would be possible to cross the land with cattle or to get timber. As he described the events for the board, Steve Blaisdell asked the board members to approve the subdivision to allow "these people to get to their lots."

Applicant Attorney Christine O'Connor defined the difference between the subdivision as a Kittery application, and the strip of land, a York application. Steve Haight showed the strip on a plan and described it as access to adjoining properties. The 5 X 50 foot strip was labeled as a "Future Right-of-way" on the plan. Christine O'Connor said that requirement to supply correct signature blocks on the plan would appear however planning board requests them. She asked if two subdivisions could be considered at the same time, which appeared to be against York ordinances. It was explained that the rule is not pertinent in this case but came into being a few years back, when the Dunkin Donuts application was comprised of two applications for the same space at the same time. Furthermore, the secondary access road does not apply because the 15-lot, two access road rule does not apply. Christine O'Connor had presented a Mylar signed by the York Fire Chief and Public Works Director showing that the subdivision does not cause a threat of public safety.

The Chairman opened the **Public Hearing**. A member of the applicant group, **Colleen Von Hayden**, began to speak, but did not, apparently at Catherine O'Connor's recommendation.

Bob Tarbox asked if the meeting follows the format in *Robert's Rules*, suggesting that after the public hearing is closed, no one should be allowed to speak. When Carroll Blaisdell came to him to discuss the 5 X 50 foot strip, Carroll Blaisdell did not discuss access to Kittery. He told Bob Tarbox that there would be no access from the property to Kittery. Steve Blaisdell was currently changing the subdivision without getting the strip approved by the York Planning Board, as should have been done three years ago. Bob Tarbox described how, at Halloween, a few days ago, Colleen Von Hayden had presented written comments about the application to people living in Woodside Meadow. Basically, along the way, some things were done incorrectly. Bob Tarbox told the board he recommended denial of the application. When Steve Blaisdell gave the right-of-way to Ms. Borkowsky, she relinquished that right-of-way within three weeks. The Kittery access should be reestablished, he said.

Cory Tarbox said 30 years ago, when Woodside Meadow was first being opened, the Tarboxes could have selected any lot. They were told about underground utilities, and they wanted a high piece of ground. They were told no one would be building across the Kittery line. Though they had high regard for Carroll Blaisdell, 30 years later, a subdivision is going into the Kittery Land, and it affects York. Things have changed. Having the deed for the right-of-way change without coming to the planning board is the reason things have changed. With the matter of possible impropriety by any planning board member, she added, she wants things in due process and sequential order.

Katherine Tarbox said she remembers when her parents first talked about buying their Woodside Meadows land. They had been told the street would always be a cult-de-sac. She is concerned about how children will play safely when things change. No one else spoke. The public hearing was closed.

Town Planner Christine Grimando had written a review of the notable aspects of the application, including the transference of the right-of-way, the amendment to do so, and the request for preliminary and final application together in one. Glen MacWilliams began discussion with the existing road emergency access. Dave Woods asked why the application for the 50-foot bone-shaped road was in front of the board. Carroll Blaisdell's heir has the road, and he is exercising his right to sell the right to it. Glen MacWilliams answered that the amendment is necessary, because there is a change. For the record, Tom Manzi read the notes about maintenance of the emergency access road by the homeowners association, its maintenance (including relocation of stone walls), and width, 50 feet. Catherine O'Connor said she did not want the board to get bogged down by things that are not germane to the application. Asking for equal time after the chairman had just allowed Catherine O'Connor to speak, Bob Tarbox said that he could not find the emergency access road and had tried, and a fire truck could not find it, if it tried.

The board discussed whether or not the application was complete for purposes of review. Barrie Munro suggested reviewing traffic issues and their impact on whether or not the application is complete. Does the subdivision work as far as traffic is concerned, he asked. Section 5.6.3 does not seem to affect any other area other than traffic impacts. Glen MacWilliams polled the board, asking if the board wanted to review other areas affected by a change in §5.6.3. All the board members, except Tom Manzi, answered no, they did not wish to review other areas. Glen MacWilliams said the applicants had an approved subdivision (Kittery) with a requirement that has not been met (York), and they had already made the transfer of ownership. Barrie Munro said the applicant wanted to move this process forward. There are two different entities, and the wrong entity is being penalized. Glen MacWilliams answered that the board is going to act in accordance with the ordinance.

Motion Tom Manzi moved that the application is not complete for purposes of review because there are outstanding issues in §5.6.3 that directly affect the whole subdivision with the change. Lew Stowe seconded the motion.

Barrie Munro said that 18 years later, the original plan requirements of the original subdivision appear to have not been met, albeit the residents have not complained until now. The issue is whether or not the plan note dealing with the construction and the maintenance of an emergency exit has been satisfied. The members of the homeowners association, not Stephen Blaisdell, own the subdivision. The application for approval of the 5 X 50 foot right-of-way application is now pending. This is a request for a simple plan change and should not include a review of the entire subdivision. An emergency access does exist. At issue are its construction and maintenance, neither of which has any bearing on the application for approval of a 5 X 50 foot right-of-way.

Vote The motion that the application is not complete passed, 3-2, with Tom Manzi, Glen MacWilliams, and Lew Stowe voting in favor, and Barrie Munro and Dave Woods opposed.

Catherine O'Connor asked for the applicant to be notified in writing about the reasons the application is incomplete. She asked for return of the Mylars that indicated with signatures from public safety personnel that the application was in good standing.

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

Catherine O'Connor asked if the board had received all the information it asked for to determine if the application was complete for review. The subject site is the five-lot subdivision in Kittery. Abutter notices were mailed out from Kittery Planning Office to abutters in York, using the labels York had given them. The proof to that fact is that there are no labels left, because they have all been used. The Mutual Aid Agreement and the Interloper Agreement have been written. She said she has obtained signatures on Mylar from the director of public works, the fire chief, and the police chief. None of those three have any issue with traffic safety. The issue with access to the existing subdivision in York has to be resolved, but, she said, her applicant group would like to continue with this application. Glen MacWilliams replied that York Planning Board does not have the entire first application on the subdivision with sole access in York. Barrie Munro asked what was missing, and Glen MacWilliams answered that the resolution for whether there is access and what that affects is missing. Barrie Munro commented that he has said over and over that with that logic, the York Planning Board is going in the wrong direction.

Glen MacWilliams said the board has the right to look at the impacts of §5.6.3 when asking if the application is complete for purposes of review. Barrie Munro said it is unfair to the applicant. The applicant and board have gotten past the showstoppers. They had brought in a plan, as instructed, and all that seems to be given back in a laundry list of new complaints about it.

Motion Barrie Munro moved to accept the application concerning the portion of Woodside Meadow Estate that is in York as complete for purposes of review. Dave Woods seconded the motion, which passed, 3-2, with Barrie Munro, Dave Woods, and Lew Stowe in favor, and Glen MacWilliams and Tom Manzi opposed.

Glen MacWilliams told Catherine O'Connor that certain issues have to be resolved, including the Mutual Aid Agreements and secondary access to the subdivision with regard to traffic. As the applicant lawyer and the group she represented met quietly and talked together for a couple minutes, York Town Attorney Durwood Parkinson offered to conduct an executive session with the planning board.

Catherine O'Connor asked to return before the planning board in a month and to be heard first, and not last, so her group is not exhausted [it was approaching midnight]. She asked for clarification about what part of the application did not work. Glen MacWilliams answered. First, the impact of traffic by the subdivision on York has to be understood. The traffic effects how the board looks at this application. Second is the Mutual Aid agreement. Town Planner Christine Grimando added that the agreements

have to be approved by the selectmen. One pending agreement concerns emergency services, and the other is for trash pick-up. There should be a plan note about the approval, for the agreements are not yet approved. Catherine O'Connor said the agreements would be signed when the application is approve. Christine Grimando added that the Memorandums of Understanding have not been signed. Applicant Engineer Steve Haight said that with the lots in Kittery and the access in York, Kittery traffic engineer and department of public works have signed off on the Mylars.

New Business

Glen MacWilliams asked the board to consider how it will deal with code enforcement issues regarding determination of the maintenance of an emergency egress and whether it complies with the subdivision plan. He asked Christine Grimando to write to code enforcement about the issue.

Other Business/Adjourn

The Mylars for American Legion and Estes Oil were signed. There was a discussion about whether Tom Manzi should sign the American Legion Mylars as acting Chairman when Glen MacWilliams was not present. The meeting ended at 12:00 A.M.