

**York Planning Board**  
**Thursday, May 14, 2009, 7:00 P.M.**  
**York Public Library**

**Call to Order, Determination of Presence of Quorum**

Planning Board Vice Chairman Lew Stowe sat in for Chairman Tom Manzi, who was said to be recuperating. This application hearing was a three-and-a-half-hours long. Lew Stowe, Barrie Munro, Glen MacWilliams, Dave Woods, and alternative Todd Frederick comprised the quorum. Todd Frederick was asked to vote for Tom Manzi. Town Planner Christine Grimando represented the planning department staff. Patience Horton recorded minutes, which were edited by Barrie Munro. The meeting was televised live beginning at 7:30, initially preempted from 7:00 by a board meeting taking place in Wells, the result of a Time Warner cable provider error. The York Planning Board meeting was taped in its entirety and re-broadcast later.

**Public Input**

**Open to the public to address any issue other than the scheduled public hearings.**

No one came forward to speak.

**Field Changes**

There were no field changes.

**Minutes: Review and approval of minutes.**

The April 23, 2009 minutes were reviewed and approved without changes.

**Motion:** Glen MacWilliams moved to accept the March 26, 2009 minutes as submitted. Dave Woods seconded the motion, which passed 3-0. Barrie Munro, Glen MacWilliams, and Dave Woods voted on the minutes.

**Application Reviews and Public Hearings**

**Yorke Fields 590 US Route 1. Map & Lot: 0042-0008. Continued review of a Major Site Plan.**

Town Planner Christine Grimando summarized the standing of the application. The 22,000 square foot office building is planned for the junction of Route 1 and Spur road. The preliminary application has been accepted as complete, and this evening marks the deadline for the preliminary Site plan review decision, which can be extended under mutual agreement. Wetland and shoreland permits have been applied for. The waiver requests include the sidewalk waiver, already granted, an angle of intersection waiver, driveway width waiver, and lighting levels waiver. The lighting waiver had recently been resolved. The State had agreed that the light level is acceptable at the entrance to the Yorke Fields property where the abundance of light spills onto Route 1. Christine Grimando continued. The driveway width had been a concern because it was unsure if the turning radii of large public safety vehicles could navigate the narrow driveway. But

most important was the issue of whether or not the Maine Department of Transportation would or would not construct changes to the intersection at the Spur Road and RT 1, as previously planned and discussed, in a timely manner. Beside that, samples of the face construction materials had been requested for review at this meeting. Christine Grimando also asked to hold a place for questions and comments made during a phone conversation by Chairman Tom Manzi *in absentia*. Lew Stowe added the building height calculations were at question.

Jeff Clifford, Altus Engineering, said there are approval letters regarding driveway access from Police and from York Department of Transportation Director Dean Lessard, though the DOT permit remains unsigned. A computer program called AutoTurn allows a simulation of the fire department pumper truck along the front driveway and on the grass pavers all a way around the building. That paver drive path is available 365 days of the year. The program shows that a fire truck, or any large automobile, could maneuver the entrance turn and the drive without crossing off the pavement. Dave Woods asked to have the dimension of the Town's new ladder truck run on the program. Lew Stowe agreed. Yorke Fields is one of the few three-story buildings in town, so it would be likely to require ladder truck access in the event of a fire. Barrie Munro said York Fire Chief Ballentine should look at the AutoTurn simulation, as he will be signing off on the terms of the permit.

Landscape Architect Woody Woodburn showed a computer-generated mock-up of the proposed view of the Yorke Fields building from the Chamber of Commerce property, as well as views of the building from the I-95 exit ramp onto Spur Road and Route 1. The building is hidden back in the woods among existing pines and deciduous trees. Additional trees will be put in. From both points of view, the false mansard roof is not apparent. Christine Grimando asked how long it would take for the new trees to grow in and screen. Woody Woodburn said five or six years.

Project John Einsiedler reviewed building height to the board's satisfaction. He also brought building materials, including the architectural roof shingle he described as generic tan. The vinyl siding shingle by Cedar Impressions is beige. The factory name for the color is Savannah Wicker. The trim is in a dark green. He presented two possible variations of the cultured stone, one with deeper browns and reds. The "stonework" will be grouted. There are three exits: the front door, the tower door, and the side door (east). Technically, there are two exits from every floor with three on the first floor.

Project Attorney Greg Orso acknowledged that the partnership for incorporating Yorke Fields access and egress into the Department of Transportation Route 1 re-construction plan is not guaranteed. The DOT project is not fully approved or funded. He summarized the applicant's plan for accommodating the possible failure of the MDOT Plan. This new plan would establish a "right turn in, right turn out" traffic pattern for approaching the subject property. This is different than the plan already approved by MDOT. It would be presented as part of Final Approval. Both plans should be approved, and the more appropriate plan will be used. The success (or not) of the Maine DOT plan will be announced in November 2009. York's public works director Dean Lessard is on board

with right turn in, right turn out, as is the police department. Barrie Munro asked if there would be an island at the entrance that would prevent northbound vehicles on Route 1 from turning left into the Yorke Fields driveway. Greg Orso answered that the island is being discussed at the State level. Vice Chairman Lew Stowe noted that right-turn-in, right-turn-out leaves waiver issues of entrance angle and driveway width in the air, making the board unable to act on the pending waivers. A brief discussion of whether or not drivers would obey the right-turn-in – right-turn-out design ensued.

Other loose ends were tied up. The building elevations the board had requested were presented. Glen MacWilliams asked for detailed and complete manufactures' specifications and colors for the materials used in the building. Though the architectural drawings are certified, the other working plans submitted for this meeting by Gorrill Palmer, Woodburn & Company, and Altus Engineering all lack certification. Jeff Clifford of Altus noted the current plans are just sketches.

Barrie Munro said the less obtrusive the building is, the better. It is more than 50 feet from the roadway, so it is going to be very difficult to see the building. The best face is supposed to face Route 1, but all sides seem to be identical in quality. The "front" seems difficult of specify and therefore should not be an issue. Glen MacWilliams talked about roof pitch and the faux roof. The zoning requires a 4/12 pitch. The Architect John Einsiedler replied that the ordinance does not preclude a flat roof. His design hides the mechanical equipment. Glen MacWilliams commented to the Town Planner that the roof pitch ordinance should be revisited and made more specific. Christine Grimando replied that the issue was in the queue for a referendum after the upcoming November vote.

Returning to right-turn-in, right-turn-out, Barrie Munro asked if the proposed crossover could use a turning lane defined with striping. The negative side to this idea is the fact that the turning lane plan requires widening Route 1. Lew Stowe asked about the impact there would be on the wetland. Glen MacWilliams referred to a letter from Police Chief Doug Bracey, which says the sight distance has been insufficient looking left (north) at oncoming southbound traffic all along. That is not going to change. Greg Orso assured that these questions and others will be answered when the applicant proceeds through the due diligence process before the next meeting. That due diligence will include meeting with Chief Doug Bracey. Referring to the a center island, Greg Orso said he goes to a business called Infinite Image. A person driving south on Route 1 and turning left cannot get into Infinite Imagery without going over the road island. Dave Woods said he had done it successfully. Greg Orso said he does not even want to try. The northbound left turn out of Yorke Fields has to be addressed at this time. Glen MacWilliams wondered what happens to the traffic that can't get in from that side and the turnaround. How about fire protection equipment? It would come from the south, and it would have to make that left-hand turn across the island, as well.

The extension for preliminary approval was moved out by two months to July 9, 2009. The board decided it was unnecessary to revisit the site. The hearing ended.

**Myles Franey, 1399 US Route 1. Map & Lot: 0097-0033-A. Application for a Route 1 Use Permit/Revision to an Approved Plan to construct an accessory storage building**

Town Planner Christine Grimando described the status of the Myles Franey application. Project Engineer Bill Livingston had recently walked the site with Christine Grimando, Planning Board Chairman Tom Manzi, and Torbert MacDonald, who attended as an interested member of the public and as representative of the interests of the direct abutters who were not able to attend. In 1991, a prior plan was approved for this applicant for this property, but the applicant did not comply with it. There has been “dumping” that has spilled over and encroached neighboring properties. A few minutes into the hearing, Christine Grimando was asked to read the definition of “dump” in the ordinance. Barrie Munro said this approved property could not be allowed to be a dump for left over lawn and garden products and debris. Proposed perimeter fencing and planting should mitigate that problem. Moving the existing concrete barriers that are similar to Jersey barriers will create adequate fencing at the back of the lot and improve appearances on the eastern lot boundary.

Barrie Munro suggested placing the burden of proof of compliance on Code Enforcement. It would help the application move forward more effectively. Glen MacWilliams said proof of remedial measures, rather than some punitive measure, should be conditional as part of the approval. Barrie Munro said the board could review and specify what the applicant has to do to move Code Enforcement to release a building permit or an occupancy permit. Glen MacWilliams said the application would have to be reviewed as a new application.

Bill Anderson of Anderson Livingston Engineers re presented Myles Franey. He went over the plan, which was mounted on the easel in front of the board. He showed the planned north-side post and rail fencing accented with Hemlock trees. He showed where the barriers are currently located and where they will be moved. The building will have to go in before the fencing. No new fence is proposed for the south side. It has a stockade fence.

The **Public Hearing** was opened and closed. No one came forward to speak.

Barrie Munro pointed to the “bump” which protrudes on the south side of the property on the 1991 plan. Covered with crushed stone, it had previously been defined as parking for six cars. He recommended planting eight trees the property line to screen this parking area from the abutting residential property and Route 1. Glen MacWilliams thought a landscape architect should be hired to develop a suitable plan. Bill Anderson asked that the applicant be able to do that landscape work, himself. Lew Stowe argued that the property is used for a landscape business, however, the applicant has not landscaped his own property. He has not demonstrated a desire to do so far. Bill Anderson said the applicant encourages the board to accept his landscaping effort rather than having to go to a higher level of expense. Christine Grimando said if the applicant has agreed to bring the plan into compliance, certification would not be needed. Glen MacWilliams said the

board is looking for the best results. Barrie Munro added that the board expects certification on the architecture, including elevations and specifics of the materials aimed at satisfying the standards to include in the plan notes. Glen MacWilliams explained that certification is a guarantee telling the board what to expect.

Barrie Munro indicated that though the applicant may be designing it, the board does not have to accept the landscaping, including buffering of the parking. Dave Woods said that landscape architects do not expect 100% of their plan to be executed. In fact, 85% of the work they've drawn is complete; they are "ecstatic." Most likely, about 50% of their plans are followed.

The board discussed project expectations. When Todd Frederick referenced fulfillment of the site plan Section 4.7(c) Christine Grimando said there is blurriness in the 4.7(c). It applies to buildings 5,000 square feet or larger. In buildings this size, the architect's professional stamp satisfies site plan regulations. Secondly, Barrie Munro requested a fencing company provide specifications for the rails, spacing of the rails, and fencing materials. No certification is necessary for fencing, but fencing has to be installed before Code Enforcement will issue the occupancy permit. Thirdly, the landscape plan will have specificity, including species names. There will have to be notes about how the landscaping will be planted and maintained. The buffer will have to be spelled out in detail.

Bill Anderson indicated he understood the instructions for the board, and the hearing ended.

**Bayberry LP/Walgreens Pharmacy. 401 US Route 1, Map & Lot 0053-0002-A. Continued review of a proposed Walgreens Pharmacy and additional commercial space**

Christine Grimando described the status of the application. Walgreens is the primary building proposed for this site, and the plan was approved in November 2008. The Planning Office has not received Findings of Fact or signed Plans. Administratively, the action is not official until there are signatures on the findings, and the appeals period doesn't begin until the findings are signed. The check arrived "today" for the unpaid fees. Construction phasing plans had been submitted, but the specific layout is uncertain. The original requirement for three performance guarantees has been changed to two, because of the way the project unfolds. Another change has to do with added language with regard to maintenance of the stormwater system. This evening, the focus is on tying up loose administrative strings. Though the public will be allowed to comment, the board's business focuses on the findings and the plan. She said board chairman Tom Manzi (absent) had requested more detail about ownership (contact names and addresses) for purposes of greater accountability. Lew Stowe expressed disappointed about the applicant's loss of contact for six months, saying the interruption has an impact on the town.

Maureen McGlone, an engineer with Gorrill Palmer Consulting Engineers, said the time frame for finishing the findings has slowed down. When the fall 2008 construction window closed because of continued planning, there was no urgency for the spring window,

she said. Lew Stowe thought the 60-day period for final approval had already passed. Glen MacWilliams thought that if the board has the authority to suspend the 60-day period that began last November, shouldn't the application review take place for substantial changes? He wondered if a legal opinion might be needed to assess the situation. Christine Grimando clarified that the clock will start when there are signatures on the Mylars and the Findings. She noted The Richmond Company, Inc. the developer for Walgreens, has changed its name to Richman York Development LLC over the course of the review.

Vice Chairman Lew Stowe opened the **Public Hearing**. **Jeff Grinvalsky**, who had come to the meeting with five to ten others wearing union logos on their shirts, came forward to represent 500 members of the New England Regional Union of Carpenters. The Richmond Company has a history of using companies that cheat on taxes and commit insurance fraud, he said. That is not good for our community of York. The problems are with the construction companies the Richmond Company hires. The companies they are using are dodging 30% of their overhead by not paying the proper taxes and Workmen's Comp. Glen MacWilliams asked if there are members of the union living in York. Jeff Grinvalsky copied the list of local carpenters and handed it to Christine Grimando. There is a direct Memorandum of Agreement, he said, with Walgreens that speaks to the agreement that contractors must adhere to criteria that holds the state law. "We" take the issue at a state level and work with the non-union sector, he said. At the end of the meeting board members commented there was nothing within the board's ability to assist in the situation. The journalist covering the meeting interviewed the presenter further.

**Walter Ziobrowski** had thought the Walgreens application was done and going forward. He wondered if the applicant is waiting until winter to cut a trench to de-water the land. He had noticed new areas of bubbly water. He mildly criticized the project, saying that the applicant does not seem to afford the abutters the same dignity the abutters have extended to the applicant. Applicant representative Maureen McGlone answered there were no deception or ill intent in the delay, which was financial and a matter of waiting for the financial climate to improve.

Christine Grimando said the instruction for starting is found in Section 5.4.9. Leeway for beginning the 60-day period can be decided without having a legal opinion. Signing the Mylar starts the clock.

Maureen McGlone then reviewed the drawing for the board, identifying the access road and the stormwater system. She showed what would be completed in Phase 1. On the same sheet, she showed the next phase that will encompass the Phase 2 performance bond. That phase includes of the two smaller buildings. It is not certain whether the performance guarantees will come in together or not. Bayberry LP is the owner. The owner leases to Richmond York Development, and Walgreens leases from Richmond. Bayberry LP is responsible for the stormwater treatment system, she said.

Glen MacWilliams asked for pagination for the Findings (14 pages in all). He referred to John Hopeck, Bureau of Land and Water Quality (DEP), who came to a York Planning Board workshop (see York Planning Board Minutes Feb 26, 2009) and used a model to demonstrate groundwater migration. John Hopeck indicated what happens with ground

water in compressed soils, which embraced the position Walter Ziobrowski and the other Walgreens abutters have taken over the course of the application, and which is contrary to what the applicant's expert geotechnical scientist, Lou Gillespie, and his associate, Cynthia Thayer, had said: There will be no real effect as a result of the Walgreens building. It would be best to try to place conditions on the developers at this time, Glen MacWilliams said. If test wells could be put in before construction, the reaction of the course of loading the soil, filling, and cutting can be monitored. Dave Woods suggested rescinding the approval to ask for monitoring wells. Glen MacWilliams suggested asking the applicant to join the Town in monitoring the ground water. Information that comes from the effort would be for the benefit of the abutters. It would begin with having the applicant give consideration to the monitoring wells. Barrie Munro said the idea is ambiguous, criteria for judging negative change does not exist, and would die before the Board of Appeals. This, in essence, is the same discussion the Board engaged in prior to approving the plan. Monitoring wells were recommended but not required when it became apparent that measuring criteria did not exist

Maureen McGlone said she is not sure there is anything in the record about what was being discussed.

**Motion:** Glen MacWilliams moved for the Findings of Fact to have updated pagination. The filing date will be identified as June 11, 2009. Christine Grimando made the friendly amendment to use old map and lot coordinates in describing the property. Also requested is the consideration of installation and specification of monitoring wells on the edge of the Walgreen property. Dave Woods seconded the motion, which passed, 5-0.

Dave Woods noted that the name of Richmond York Development had not been updated on the Mylars. Walter Ziobrowski spoke again, asking who will be responsible if his house shakes from this activity the way felt like an earthquake when the property was loaded in 1998. Glen MacWilliams said the board could not answer that. The hearing ended.

## **New Business**

There was no new business

## **Old Business**

### **York Beach Subcommittee Update**

Dave Woods said the sidewalks in York Beach are being redone at the given moment. Red crosswalks are being installed. The parking lot across from the fire station is being reconfigured, which will yield more spaces. Two loading zones are indicated on Railroad Ave., one by the café, and one by Garfield's. Crosswalk signage will not be placed in the middle of the roads, so the anticipated loss of parking spaces will not happen. The design standards will be reappraised after the beach season. Jim Carmody, the traffic engineer for Portend, has been helpful.

Glen MacWilliams said Mike Estes (Board of Selectmen Chair) asked Glen MacWilliams to renew his commitment to the board for a third three-year term, and Glen MacWilliams regrettably declined.

Todd Frederick will chair the Design Review Board for the Harbor in place of Glen MacWilliams.

There was no Other Business. The meeting adjourned at 10:40.