

**TOWN OF YORK PLANNING BOARD
THURSDAY, MAY 13, 2004
7:00 PM, YORK PUBLIC LIBRARY**

Chairman Glenn Farrell started the meeting at 7:00. Dave Marshall, Barrie Munro, Glen MacWilliams, Richard Smith, whose status had changed from alternate- to full-board member since the last meeting, alternate Tom Manzi, and new alternate, Lee Corbin, attending her first meeting, were present. Brett Horr represented the Planning Office in Steve Burns's absence. Patience Horton took Minutes. The meeting was televised. Six motions were made.

Agenda items **Highland Farm Subdivision** and **Estes/Sprint** had been removed from the agenda at the applicants' request. The **DLJ Corp.—St. Charles Place** hearing was canceled because the applicant was not present when the hearing would have started.

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Public Input

Open to the public to address any issue other than issues scheduled for public hearing on this agenda.

No one rose to speak.

Minutes Review and approve draft minutes.

There were no changes suggested for the April 22, 2004, minutes. To the April 29, 2004, minutes, which was a planning board/selectmen joint workshop held at the York Senior Center, Glen MacWilliams asked that his request for inclusion of the contiguous wetlands item on the already established work priorities agenda, as well as the selectmen's subsequent agreement to its inclusion on the agenda, be added to the corrected minutes.

Motion Glen MacWilliams moved to accept the April 22, 2004, minutes as presented. He moved to accept the April 29, 2004, minutes as corrected. Barrie Munro seconded the motion, which passed, 5-0.

Applications

1. Richard and Therese Wallace. 58 Windmill Acres. Map 71/Lot 6C. Public Hearing. Request to exclude a wetland from the Shoreland Overlay District pursuant to Zoning Section 8.1. The owner has evidence that the wetland is less than 4 acres in size and does not belong in the Overlay. This is a follow-up on the March 25th discussion.

Chairman Glenn Farrell opened the public hearing. Attorney Jim Bartlett, representing the applicants, gave reasons to remove the property from the current greater-than-4-acres designation: Woodlot Alternatives had endorsed the change; Steve Burns had sent someone who found not saltwater infiltration at the site; the Al Frick & Associates measure-

ment of the land had proven to be accurate; it is not a coastal wetland; and email from the Army Corps of Engineers reinforced their lack of jurisdiction over the matter.

David Tibbetts of the York Conservation Commission presented support for keeping the parcel of land with the current designation. A map prepared by the natural areas organization of the State of Maine showed the wetlands extending from Godfrey Cove as brackish tidal marsh with an endangered plant community and habitat for rare species such as eastern cottontail. He brought photos of the drainage pipe with water backed up ½ way from storm surge and runoff after the latest, large storm. He described the two berms, natural and manmade, the percolation action between the two, and the ponds they create, one by ocean wave action. All this adds up to the area being coastal wetland, he said. Plants that tolerate salt, such as hedge bindweed, morning glory vine, and silver weed all grown there. He handed out Finding of Facts he prepared concerning the application. The Findings stated that in the Town of York Zoning Ordinance November 13, 2003, Article 3.12, it says, “Wetlands shall be identified as detailed in the Corps of Engineers Wetlands Delineation Manual (1987). From the Corps of Engineers Wetland Delineation Manual 1987, the Findings cited the definition of “coastal and inland waters, lakes, rivers, and streams that are navigable waters of the United States [to include] the adjacent wetlands.” Thirdly, the Findings cited the Clean Water Act of 1977, §404, 33 CFR 323.8(a), which defined contiguous wetlands for all waters in the United States as “Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are ‘adjacent wetlands.’” Manmade barriers do not separate adjacent wetlands, he reiterated. For these reasons, he recommended that no action be taken to remove the property from the wetland protection zone.

Jim Logan, a soil scientist from Al Frick & Associates, had submitted previous information to the board about the land. He doubted accuracy of the scale of the map used in David Tibbetts’s presentation. He suggested having the salt content analyzed. He said the salt-water-tolerant vegetation was fringe, rather than predominate. He qualified the Army Corps’s definition of adjacent waters as navigable, which this was not, adding that the Corp has no jurisdiction over the decision. He reaffirmed his company’s position that the area is outside the wetland.

Helen Weinbaum described the two berms, one of which is manmade. She described the two ponds, Seabury and Godfrey. Godfrey Pond does have cormorants fishing in it, so it must be salt. She emphasized the importance of changing the ordinance that allows these wetlands to be divided up by roads. She described another house that was created under this similar approach, saying that hardships were created when the septic was built close to the well, and setbacks were made minimal to accommodate the development of the property. She said she could not see why the board would allow a larger house there when a house that already had received a variance was totally against the rules.

The public hearing was closed. Glenn MacWilliams spoke in favor of the Conservation Commission presentation. He agreed that this is a series of wetlands. The ocean comes into the series through natural forces. Including the wetland divided by and adjacent to Sparrow Lane, the series is one hydrological structure. Chairman Glenn Farrell described

the prior meeting for the audience. He referred to the findings from Al Frick & Associates that confirmed that the land is a freshwater wetland less than 4-acres in size. Barrie Munro emphasized Item 2 from the Al Frick findings, that freshwater remains freshwater, even when it is adjacent to salt water. Glen MacWilliams said that the York ordinance should come second to the rules of the Corps of Engineers. Richard Smith said that the board has to follow the town rules, not the Army Corps's. It is less than 4 acres, and it is fresh, he said.

Motion Glen MacWilliams moved to deny the application separating the wetland and delineating it to be less than 4 acres. Dave Marshall seconded the motion. The motion did not pass, with a 4-1 vote. Glen MacWilliams voted in favor of the motion, and Glenn Farrell, Dave Marshall, Barrie Munro, and Richard Smith voted against.

Motion Glen Farrell moved that, based on the review by Woodlot Alternatives and confirmed by the applicant's findings, and based on the Town ordinance, the board approves the request of the applicant that the property is less than 4 acres. Barrie Munro seconded the motion.

In discussion, Glen MacWilliams asked that the Board understand that the Clean Water Act is designated for the entire United States. It requires decisions that protect the environment and not disregard it. It is a State and Federal requirement.

Glenn Farrell said that the Clean Water Act as described in the materials brought forward by David Tibbitts has to do with land fill. Lee Corbin said that the information supplied by David Tibbitts lacked regulations upon which the board could act. The Army Corps stated they have no jurisdiction. The zoning ordinance concerning the less-than-4-acres wetland, with which the board was basing its decision, remains the controlling law.

Vote The motion passed, 3-2, with Glen MacWilliams and Dave Marshall opposed.

S&J Collision. 366 U.S. Route One. Map 59/Lot 22G. Public Hearing. Application to amend the Route One Use Permit to add vehicle storage behind the building.

The Chairman opened and closed the public hearing. Brett Horr reviewed Steve Burns's recommendations of conditions, including prevention of worsening land conditions on the property and installation of a Knox Box.

Motion Barrie Munro moved to approve the applications, including conditions and findings of fact. Richard Smith seconded the motion, which passed, 5-0.

Highland Farm Subdivision. 301 Cider Hill Road. Map 90/Lots 29, 29A, 29B, 29C, 29D, and 29E. Public Hearing. This is a conceptual review of new plans for a 43-lot cluster subdivision.

Tabled.

DLJ Corp.—St. Charles Place. 276 Long Sands Road. Map 38/Lot 4. Public Hearing. Application for Sketch Review for a 4-unit subdivision, consisting of 2 duplex buildings on a single lot.

Chairman Glenn Farrell noted that no one was present to represent the application. He saw that a number of people were present for the public hearing, but without an applicant, the public hearing could not be held.

Motion Barrie Munro moved that any future submission on this application should include an engineering solution for the handling of flooding on the property. Glen MacWilliams seconded the motion, which passed, 5-0.

(When applicant Duane Jellison did come in, about 10 minutes later, it was not possible to carry on the public hearing, because the abutters had left. To him, Glen Farrell also explained the motion about the engineered drainage plan that had been passed.)

Estes/Sprint. 519 U.S. Route One. Map 48/Lot 43. Public Hearing. Application for an 84-foot tall flagpole, to be utilized as a disguised wireless communications facility.

Withdrawn by Applicant.

Other Business/Adjourn

TAGT Remand. Sign modified site plan for TAGT, Inc., located at 360 U.S. Route One. The Board of Appeals removed the driveway easement from the plan, and the Planning Board is required to sign a plan with this change. No public input or hearing is required.

Motion Glen MacWilliams that board members sign the plan. Barrie Munro seconded the motion, which passed, 5-0.

Brett Horr then discussed a letter from the Town of South Berwick stating that York Planning Board has the right to participate in hearings regarding a subdivision being built in South Berwick that can be accessed by York roads. There was discussion about the effectiveness York board members will have in South Berwick decisions and questions about the legal mechanism that will be established. Dave Marshall described the nature of the mechanism as pivotal in York planning board members' ability to have meaningful input.

Glenn Farrell suggested that the Town charge a fee for its expenses in the even that applicants table their own applications after the Planning Office's considerable effort and expense has been made toward a hearing.

The meeting was adjourned at 8:15.