

**York Planning Board
Thursday, August 9, 2012, 7:00 P.M.
York Public Library**

Call to Order, Determination of Presence of Quorum

Chairman Todd Frederick presided. A quorum was determined with five people voting: Todd Frederick, Torbert Macdonald, Jr. (whose term on the Board had not expired), alternate Tom Prince (who had been asked to vote as a full member), Lew Stowe, and Dave Woods. Alternate Dave Glazebrook was present. Town Planner Christine Grimando represented staff. Patience Horton took Minutes.

Public Input

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

Ron Nowell said that the town has known for two years or more that it does not own all the property on the plan. When the Town presented the plan, it knew it didn't own it. What do they do when their Board of Selectmen is in violation of those rules, regulations, and State law? he asked

Mary Andrew introduced herself as the president of the York Ambulance Association. She read a letter into the record written by Tom Manzi to Ellen Prince asking York Ambulance to supply ambulance log and information about the safety record for Route 1 between Old Post Road and Abbott Brothers. Mary Andrews noted this request was inappropriate as Ellen Prince is the wife of a Planning Board member.

Torbert Macdonald spoke as a citizen. He said his term on the Board had not expired, as previously thought. There had been a clerical error. In the development world, there are public rights in ordinances and regulations. There is a tendency to "game" the system. From time to time, the Planning Board enables them. The rule of law prevails. The Board shall not enable those who game the system.

Kinley Gregg said that, because of her understanding of the land swap for the Union Bluff parking lot, she had voted against forwarding the Police Station application to the Planning Board last December. That was because the Town doesn't own all the land. Another piece of land is not owned, the driveway from the Police Station to Ridge Road. Did the Planning Board know the Town did not own a parcel of land that was used to build the access road to the police station?

Town administration submitted a deceptive plan for Selectmen to review and forward to the Planning Board, she said. If you knew the Horns owned the land that you needed, why did you approve the application and sign the Mylars? There is nothing on the plan that shows the Horns owned the land under the Ridge Road access, which was already built with Planning Board Approval. Were you pretending it wasn't there?

Scott Fiorentino spoke as a citizen on behalf of the Building Committee, which has been working with the Horns about the property. It is amazing that the people working hard to

thwart this project come up here and accuse the Planning Board of not doing it properly, he said that there was a little piece of property. It went to warrant. The Horns worked with the Building Committee, and they wanted to see the project go through. In the land swap, they weren't sure what property is best. This was signed a year ago. This wasn't something they tried to sway. They started working with the Horns a year ago. This is the eleventh hour. They have filled out every piece of paper that the State and the Planning Board have required. **Public Input** ended.

Field Changes

Barrell's Grove Subdivision Field Changes

The field change was not presented this evening.

Minutes

The Minutes of July 19, 2012 were reviewed. Changes were requested

Motion: Dave Woods moved we approve the minutes of July 19, 2012. Tom Prince seconded. The motion passed 3-0-2, with Lew Stowe and Torbert Macdonald absent.

Town of York Connector Road. 1051 U.S. Route 1. Map & lot 0094-0077. Continued review of a connector road proposed in conjunction with a new public safety building.

Todd Frederick referenced Article 5 of Planning Board Bylaws, Hearings, and described the procedure for public hearings.

Motion: Dave Woods moved that we open the **Public Hearing**. Tom Prince seconded the motion, which passed 5-0.

Application Reviews and Public Hearings

Christine Grimando said the application process for has gone for a year. The Preliminary Site Plan review for the connector road has been granted. 6.4 is complete. Waivers have been submitted: High Intensity Soil Survey; Road cross-sections every 50 feet; Monumentation before final approval; and maximum grade at Route 1 intersection. Two specific detail sheets about intersection design have been added, and the Traffic Engineer will review them. The board can make a decision if the application is ready for final review. If not, what are the outstanding items?

Andrew Johnston, SMRT Civil Engineer, had reviewed many parts of the plan a number of times before. He explained the fourth waiver. It was noted by peer review. The speed of a car going off a slope and into the moving traffic is slower from a slope than from a flat road, as established by AASHTO, which states the slope should be kept between 3% and 6%. The connector road slope is 2%. But those standards are for non-signalized intersections. The traffic light accommodates slower traffic. The design standards are not applicable. A waiver is sought.

Ralph Norwood, Traffic Engineer with Gorrill Palmer, reviewed the unchanged configuration of the intersection using two newly prepared, detailed sheets. The handout has more detail of notes, the traffic signal arms, overhead lane signs, detection zones, advanced detectors, and orange flags that attach to the signals initially and draw attention to them.

Motion: Dave Woods moved that we accept the submitted plan for Town of York Connector Road. 1051 U.S. Route 1. Map & lot 0094-0077. Tom Prince seconded the motion.

In discussion: Lew Stowe said he had called for the detailed plan, but cannot read it.

Vote: The vote passed, 3-2, with Lew Stowe and Torbert Macdonald voting against.

Ralph Norwood and Andrew Johnston answered Lew Stowe's questions. There will be a raised 1" concrete island on Route 1N to shadow the left turn lane. Sheet flow drains into a vegetative area. There is a culvert in that area. It is shown on the plan. Traffic lights are minimally 16 feet, 19 feet high at the most. If too high, they can't be seen. The Town standard site distance for retrograde arterial is 550 feet, which is greater than State standard. However, the State has accepted a 383-foot sight distance at this light, because cars do not need as much sight distance when a traffic light directs them. There are no streetlights planned for the connector road.

Lew Stowe said that the plans must be stamped and certified.

Torbert Macdonald said that when preliminary approval was given, it seemed like a go-forward to start building the road. What is on the ground is at odds with what the design says it should be, he said. The road has been "built" (cleared and grubbed). 11.2.5 of the Site Plan Regs called for that not to happen. It is appropriate for the Planning Board to ask in writing for the CEO to determine if there is a violation or not.

Torbert Macdonald read 5 lines from 11.2.5. "Development of a site plan or subdivision without board approval shall be a violation of law. Development includes clearing, grading, or construction of streets. Grading land or lots or construction of buildings require a final plan approval as provided in these regulations. No development of a subdivision will be permitted until the final plan has been recorded and copies returned to the Town pursuant to Section 5.5.1." 11.2.9 says, "It shall be the duty of the Code Enforcement Office to enforce the provisions of these regulations and to assure that the project is in compliance with the Final Plan." It doesn't say anything about the Preliminary Plan, he added.

Todd Frederick asked if there was an active violation before the town. Torbert said that it would be appropriate for the Planning Board to ask, in writing, the CEO if there is a violation or not. Tom Prince said that, according to Richard Smith and Ben MacDougall, it is up to the Planning Board to take action.

Torbert Macdonald asked Andrew Johnston to point out the 12 forested stormwater buffers on the plan. How wide is the clearing? Was there a plan to protect each of the buffers? Is snow removal and storage indicated on the plan? 7.12.1 calls for legal disposal of stumps and brush. 6.4.15.1 states that the site plan must show how the areas are disturbed by construction. 7.11.2 calls for the site plan to show the areas that are disturbed by construction.

Andrew Johnston said that the forested stormwater buffers are not clearly seen on this particular plan. The road is 60 feet wide, and the clearing for the right of way is 100 feet. Trees with roots under the road have to be removed. Decisions come from the construction contractor and an engineer, and they are guided by the third-party inspector. SMRT is not supervising construction. The snow is plowed.

Lew Stowe said there had been conditions made about installation of monuments before the beginning of road construction.

Public Hearing

Bob Manzi of Cape Neddick read from a letter from his brother, Tom Manzi, regarding the connector road. It is important for the Planning Board to make a plan to collect the best practical data, Tom wrote. He would like to know who the responsible party is for the land clearance.

Ron Nowell said he grew up with the Horn brothers and did not rile them up. The Town did. He said that the Planning Board is running the meeting differently than the method used by any State or County meetings. The correct meeting order is: Presentation of material, Public Hearing, and then Board Review.

Ron Nowell said that Rob Yandow, Town Manager, asked “you” whether or not clearing could begin, and you gave him the impression that it was okay to clear. Rob told me that the Planning Board gave him permission, and Christine Grimando told Rob the same thing, that it was okay to begin the work without permitting.

After the procedure, the 50-foot right of way is more than 100 feet wide. A section through the wetlands has no erosion control. Who authorized the contractor to strip 100 feet when it calls for 50? Who authorized the contractor to strip four acres behind the Blinn parcel? None of this shows on the plan.

At the last Selectmen’s meeting, they tried to create an illegal subdivision on that property. When you erroneously granted permission and signed the Mylar, did you realize it was a two-lot subdivision? Were you told that the police station contained another lot? At the last Board of Selectmen’s meeting, they voted to break off the lot where the Blinn building is and sell it. Now there are three lots. You have an illegal subdivision. That lot does not show on that plan.

There are actually four lots, he said: The lot with the Blinn Property; the remainder of the Blinn property; the lot to be conveyed to the Horns, which was created when the Planning Board signed the Mylar; and the separate lot with the police station.

Ron Nowell concluded that the schematic plan being used is false. If it is coming from the Town, they are accountable. If they were to sell the lot, it would have to come back to the Planning Board to be amended.

Glenn MacWilliams identified himself as the past Chair of both the Planning Board and the Conservation Commission. Will the Planning Board hold a public site walk? What provisions allowed Earthwork operations before the final plan is approved? Does the scale of this development meet that of York Beach Village (per Comp Plan)? Are the natural features of the protected by local, State, and Federal designation?

Dave Emory of York said he was appalled. He wouldn't get approval if he was trying to put a road in, but how does the Town get approval? He had asked Steve Burns, Ben MacDougal, and Lew Stowe about the proper permitting process. No one can give me the answer, he said. The Town is clearing land without proper permitting. Something has to be done. The Board has to investigate this. Something is happening in this town, and it smells, he said. I am asking you not to approve anything until this gets ironed out.

David Brinkman is thrilled that the people decided to have a road from Route 1 to York Beach. The process is taking place of trying to push in that direction to get us there. It seems as though some almost want to give the land back to the aborigines and have everyone who has involved in advancing the project spend the rest of their lives in jail. It seems ridiculous to me as a citizen, and I congratulate everyone of you will work toward pushing this to a conclusion and not let the Lilliputians take all these threads to tie you down and keep you immobilized forever, thank you. [close to verbatim]

Kinley Gregg asked who she could go to express her concerns. Per 11.2.9, the Code Office is responsible for bring to the attention of the Planning Board and Board of Selection any violation due to lack of compliance. Earlier this evening, the Town Planner said there is no violation. A couple of weeks ago, it was your job to determine a violation. Kinley endorses the site walk. She would like to know where the stormwater buffers are.

A letter from **Richard Smith** was read. The regulation of the site plan without Planning Board approval shall be a violation of the law. Timber harvesting is limited to 20 cords per year. What article allows the Town to start any clearing before the signing by the Planning Board?

Motion: Torbert Macdonald moved to close the Public Hearing. Dave Woods seconded the motion, 5-0.

Motion: Torbert Macdonald said, the motion is to table the project before us indefinitely, pending resolution of the many issues raised tonight by members of the board and the public after a site walk, so that we can have an understanding not simply what the design

is, but what is actually taking place on the Earth, because after all, that is what counts. Lew Stowe seconded the motion for discussion.

In discussion, Torbert said the motion is to table the project until we've had a site walk. Lew Stowe said he is supportive of the road, but it is the process that is out of control. He asked to remove the word "indefinitely" from the motion. Torbert agreed to remove the word "indefinitely."

Vote: The motion failed 2-3, with Torbert Macdonald and Lew Stowe in favor and Tom Prince, Dave Woods, and Todd Frederick against.

Motion: Dave Woods moved we approve the Waiver Requests for §6.3.32, High Intensity Soil Survey. Tom Prince seconded.

Motion Withdrawn: Lew Stowe asked for the waivers to be voted individually. Tom Prince agreed.

Motion: Dave Woods moved we approve the Waiver Request: §6.4.14.2, Road cross-sections. The motion passed, 5-0.

Motion: Dave Woods moved we approve the Waiver Request: §7.1.8.6, Monumentation prior to first approval.

In discussion regarding monumentation, Lew Stowe said he wants to have the monuments put in. Andrew Johnston said it would be to the practical benefit of the applicant if all monumentation was waived so they could all be installed at the same time. The permanent, granite markers will come in with the backhoe, which has to dig a hole four feet deep.

Vote: The vote passed, 4-1 with Lew Stowe against.

Motion: Dave Woods moved we approve the Waiver Request: §9.5.9, Maximum grade within AASHTO parameters. The motion passed, 5-0.

Dave Woods said the submitted plan has gone through peer review. The state came in and granted everything (short of speed limit) we asked for. DEP and DOT have approved the application. It will be a safe intersection. State review says it is okay. The Town Planner recommended that we accept this as complete for final review. We voted on the waivers.

The board does its best as lay people to learn, understand, and decipher. We bring in professionals with a stamp. Many are putting their necks on the line. The part that bothers me is when the Town is bringing something to the Town that is paid for by the Town. There is no upside on this project on personal levels for some people. It has gone as far down the drain as I have ever seen a project. I want to see it come to an end. I move that we approve this evening and get it over and done with.

Motion: Dave Woods said, I would like to make a motion that we approve the Town of York connector road, 1051 U.S. Route 1. Map & lot 0094-0077, which is going to bridge from the Police Station, which is to be approved out to Route 1. Tom Prince seconded the motion.

In discussion, Lew Stowe said that we have to follow our ordinances and not jump to conclusions. We have a list of 30 items we are supposed to follow prior to the approval of final plan. The process is wrong. The Planning Board has been attacked. He said that the Planning Board should stand up and uphold the ordinances.

In further discussion, Torbert Macdonald said the process has fallen by the wayside. I had offered a four-part plan that could have redeemed the Planning Board in the court of public opinion. It is a conflict of interest and a burden as an assistant for Christine, or anyone else in Town Hall, to review what the boss is promoting. I had recommended having the Town hire a contract planner. On the face of it, we are in violation of the regulatory process. Work has proceeded illegally at the preliminary approval stage, a violation of Site Plan Regs.

In further discussion, Dave Glazebrook said that following the plans and regulations is paramount. If the project meets it, it gets approved. He doesn't want to approve it, if it doesn't meet it. If there are two lots and we disagree, we have to go forward. If there is something wrong with it, we have to go to peer review. If they say it is right, and there is no violation, I have to go by that. If there is a problem with it then, then it has to be held by outside forces.

In further discussion, Tom Prince said this started August 11, 2011. This is our 7th meeting. We have reviewed it thoroughly. We have followed the ordinances. There is no evidence we have not followed the ordinances. We heard testimony this evening the issue was the "horrible disparity of what is happened on the ground." At the last meeting, the issue was safety. Next week, it will be something else. We have done the DEP and DOT process, and we have followed the ordinances.

Move the Vote: Lew Stowe moved to move the vote, 3-2. Dave Woods, Tom Prince, and Todd Frederick voted to move the vote.

Vote: The motion to approve the Town of York connector road passed, 3-2 with Lew Stowe and Torbert Macdonald voting against.

Keitts Point Access. 205 Beech Ridge Road/18 Claude McIntire Road. 0086-0036/0086-0031-D. Application for a Shoreland permit for Road Construction, an a Special Use Permit for the Resource Protection District.
To another agenda

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 for an expansion of the existing visitor center

Motion: Tom Prince made a motion to move Sohier Park out two weeks to a special meeting held August 23, 2012, at the library. Dave Woods seconded the motion. It passed 5-0.

Cape Neddick Country Club 650 Shore Road. Map & Lot 0100-0003. Site Plan Amendment for an event tent and associated parking and drainage improvements for an existing country club.

Abutter **Ishmael Guthrie** said he wants to see the drainage designed by a licensed engineer. All the property must be taken care of. Is this a tent facility by day and a party by night?

Motion: Dave Woods moved for a site visit for Cape Neddick Country Club to be scheduled in order to look at the land, the drainage basis, and the clearing for a parking lot. Torbert seconded the motion. 5-0

New Business

Preference Votes on November 2012 Ordinance Amendments

To be placed on the August 23, 2012, Agenda

Old Business

**Signing of Findings of Fact and Mylars: York Storage Solutions Amendment
Stonewall Kitchen Parking Amendment**

Christine Grimando said that the Stonewall Findings are not ready. York Storage was voted on at the last meeting.