

York Planning Board
Thursday, March 27, 2014, 7:00 P.M.
York Public Library

Call to Order, Determination of Presence of Quorum

Chairman Todd Frederick called the meeting to order at 7:02. A quorum was determined with five people voting: Chairman Todd Frederick, Vice Chairman Al Cotton Jr., Board Secretary Lew Stowe, and alternates Peter Smith and Amy Phalon. Both alternates were asked to vote as full members. Community Development Director Steve Burns and outgoing Town Planner Christine Grimando represented staff. Patience Horton took minutes.

It was Christine Grimando's last meeting before joining the City of Portland, Maine, as a Senior Planner.

Board member Brud Weger had surrendered a letter of resignation to the Chairman, because of the demands of his career.

Stormwater Management Director Leslie Hinz and Christy Rabasca, the consultant with Integrated Environmental Engineering, attended this meeting in order to workshop model MS4 ordinances with the Board.

Public Forum

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

Peter Ashley has attended the meetings of the Building Committee for the Police Station. The upcoming Building Committee meeting in April will review the situation from the building point of view. He brought information prepared by NESEA, the North East Sustainable Energy Association for the planning board to read and use. Chairman Fredrickson told Mr. Ashley the subject will be incorporated into a Planning Board workshop at a later time.

Field Changes

There were no field changes.

Minutes

The March 13, 2014, Planning Board Minutes were reviewed and corrections were requested.

Motion: Peter Smith moved to approve the March 13, 2014, minutes as amended. Lew Stowe seconded the motion, which passed, 5-0.

Field Changes

There were no field changes.

New Business

- **Planner Transition**

Community Development Director Steve Burns spoke of Town Planner Christine Grimando, who was leaving after six and a half years with the Town of York. Her position is being advertised and will hopefully be filled by the end of May. The Village Committee is a priority for the board's workload, but MS4 is the biggest priority, with the first workshops coming up in May, he said.

Chairman Todd Frederick gave accolades of Christine Grimando's work. Her major projects included several years of working on the Green Enterprise overlay zone in York Beach, with subsequent adjustments to the Comp Plan; workforce housing; York Beach Village standards; Farm overlay zones; and consideration of form-based zones. She had guided the board through the very, very large Pine Ridge subdivision, and also managed through Barrell's Grove with its sensitive stormwater system. She introduced innovative subsurface technology. Her impact on the town has been great.

On behalf of the board, Peter Smith gave Christine an inscribed clock that read, *Thanks from a Grateful Planning Board, March 27, 2014, York, Maine*. She was regaled with applause. Peter said about the clock, "We all know how much room you are going to have on your desk for this clock—for about a week."

- **November 2014 Comprehensive Plan and Ordinance Amendments:**

- **Septic Amendment**
- **Cape Neddick River Watershed Plan**
- **MS4 Model Ordinances**
- **Medical Marijuana**
- **Harbor & Related Zoning Amendments**
- **Massage Therapy**
- **Special Events**

These items were not held in agenda order.

Medical Marijuana

Steve Burns said that locations of Medical Marijuana facilities are confidential, so the Police and Health and Human Services have no idea what's inside the walls. Currently, Town codes don't address this as a land use, but it should be treated as a land use, just as a pharmacy is. The applicant should come to the Planning Board for a full public review.

Steve Burns said Federal regulations prevent dispensaries from dealing with credit cards and checks. The dispensing of medical marijuana is a cash business. The Dept. of Agriculture sees marijuana production as small scale, backyard farming, not agriculture. We should treat it as a commercial use and establish a process for approval.

Todd Frederick referred to Title 22 of the State Statutes. A town can't block dispensaries from within its jurisdiction. A good question is, how can we regulate how many there are and where they are? They do have to be 500 feet from schools.

Amy Phalon said the law states you can't say no to dispensaries, but we can apply zoning as we do with usually town regulations, thereby regulating where they are. We also can't say that someone with a dispensary can only have a limited number. We can't regulate where they are and how many there are. The main difference for us is between the caregiver and the commercial dispensary.

Chairman Todd Frederick opened the public hearing.

Chuck Ott of York saw an article in the February 18, 2014, issue of the Portland Press Herald with the State Director of Licensing and Regulatory Service's statement that there are care givers in Maine who are not complying with regulations. Mr. Ott said that there are no assurances from any branch of government that these facilities are operating legally. During this public hearing, Mr. Ott appealed to the Planning Board to make the most of its influence and the impact it can have on decision-making in this town. There is urgency in dealing with this in a reasonable and timely way.

Louise Littlefield of York said that if you are the caregiver for one family member who needs medical marijuana, you could grow six "in-bud" plants at a time. But what about people who are growing for many more than one caregiver? They are growing it for money. If you call the police, they can't check. Did the police even know that we had a facility in York before the neighbors complained?

Lew Stowe said that a person couldn't get onto a property without permission no matter what the reason. Steve Burns wondered how dispensary property would be assessed for taxes. Expressing her own strong concern and using the word "scary," Amy Phalon said that York is being targeted by marijuana lobby as a trial ground for recreational use.

The final testifier in this Public Hearing, **Charlie Spear** said the Planning Board has to distinguish between the grower and the dispensary. The difference between the two seems to be overlooked by the Planning Board. Working with the code, you have to be doing both.

HIPA laws, Mr. Spear continued, probably don't exist as far as the grower is concerned. The grower can hide behind HIPA laws, because they are not dealing with patients. He said he is considering his Own Back Yard with increased awareness. "You can't shut [medical marijuana] down, but you can limit it by land use," He said.

MS4 Model Ordinances

- **Municipal Separate Storm Sewer Systems**

Leslie Hinz is the MS4 Stormwater Manager for the Town of York, and Christy Rabasca is the MS4 consultant from Integrated Energy Engineering. She is assisting the develop-

ment of the two initial MS4 ordinances for York. During this meeting, she and the Planning Board work-shopped the draft Non-town Stormwater Discharge Ordinance and the draft Post-construction Stormwater Management Ordinance, which are expected to be implemented in January and June, 2015.

Christy Rabasca said that, historically, in 1990, the EPA started regulating Large MS4 districts in cities like Boston and New York. Maine EPA issued the first 28 MS4 permits in 2003. In 2013, York was added to the count, having qualified as a municipality in the 2010 census.

Steve Burns discussed the “area map,” showing two districts dividing the middle of Route One. It shows that Bridges Garden Center, on one side, is MS4 regulated, but Whippoorwill, on the other side, is not.

Christy Rabasca’s first recommendation was to enforce town-wide ordinances to have every area in the town regulated by MS4. Christine Grimando agreed. She said that if the board decides to pursue a Town-wide MS4, the entire town would be regulated under MS4. It would not be a matter of whether a stream is “in or out,” as with Bridges Coastal Landscaping and Whippoorwill Subdivision.

Todd Frederick reviewed basic tenets of MS4. No storm water with pollutants is allowed to discharge into a storm drain system. An illicit discharge would be dumping, leaking, or the pouring of oil, gasoline, kerosene, diesel fuel, and/or septic into the streams. Fertilizer can be put onto and seep into the grass, Ms. Rabasca said, but not onto the sidewalks, and streets, and then washed into the storm drain.

Lew Stowe said building permits would not be issued on particular types of site developments and subdivisions, unless the builder meets MS4. A stormwater management plan has to be part of that development. An annual report is required.

Christy Rabasca said a person who can do the inspection could be either a qualified third-party inspector or the owner of the property. The qualified inspector would have to be DEP certified. Amy Phalon said York should require third-party certification, especially in post-construction, and not allow the owner to inspect. Maybe it would be more effective if more specific enforcement practices were in place before the problem starts, she said. That way the violator can be found and fined and taken to court before there is a catastrophe.

Christy Rabasca said that the CEOs are watching the buffers, rain gardens, and detention ponds. They sign off when the site has been fully stabilized. Steve Burns said that before occupancy is given, the plan has to be certified, by a fully qualified design engineer, that everything is done according to the plan.

- **Post Construction Stormwater Management Ordinance**

Lew Stowe scrutinized this sentence fragment from the post construction draft ordinance: “Any spilling, leaking, pumping, pouring, emptying, dumping, disposing of additions of

pollution to the *waters of the State.*” Steve Burns said that the statutes affirm that you can’t pollute the waters of the State. That is how they define it. Lew said there should be a better definition. Christy Rabasca said the town can write its own definition.

At Lew Stowe’s request, Christy Rabasca examined another sentence fragment: “Rock, sands, and dirt.” Those are part of a Federal definition of pollutant, she said. Those things are in the storm drain system. Those words stay in the definition as written. Heat is a pollutant. The basic ordinance language was written by James Katsafecus of the Maine Municipal Association. He has thoroughly developed definitions that will stay off litigation.

After discussion Amy Phalon determined that in the amended ordinance documents:

- The storm drainage system will be called, “the storm drainage system;”
- When defined, the storm drainage system will be called “the Town’s regulated small MS4.”

Mr. Al Cotton said it is easy to lose what MS4 is all about. The educational piece has to take us back to the main point. People are responsible for their own activity and not let it get into somebody else’s area. We should educate the property owners that way, instead with all the details. Just as real as the expression “What happens in Vegas stays in Vegas” is, in York, what people do on their property stays on their property.

Motion: Peter Smith proposed that we post a public hearing of the draft Post-Construction Stormwater Management Ordinance and the associated recommended changes to the Site Plan and Subdivision Regulations and Zoning Ordinance as identified in March 22, 2014. Amy Phalon seconded the motion.

In discussion, Lew Stowe said he has more points to bring up, but they can wait. Peter Smith asked the chairman to call the vote. The motion passed, 5-0.

- **Non-Stormwater Discharge Ordinance**

This ordinance prohibits people from dumping pollutants in the storm drain. Enforcement includes notice, issuance of violation, and charges. Amy Phalon said the enforcement could be made more concrete and specific. Steve Burns said we don’t have the right to go on private roads, unless there is a complaint. We can approach the property owner, but there has to be permission. Leslie Hinz said this is tied in with the Cape Neddick Action Plan, which focuses on public education and outreach, which will result in compliance.

Christy Rabasca complimented the board. She has never seen any communities implement stronger enforcement provisions. The length of most other communities’ enforcement has been issuance of a notice of violation and voluntary compliance.

Steve Burns said that strong enforcement means that, if there is a continuing active pollution source, it is going to get escalated out of our office to the Board of Selectmen for legal enforcement through the Town Attorney. We are under mandates from the State and

EPA to fix the problem. We have to turn to the selectmen and the attorney, if we don't get voluntary compliance.

Allowable non-stormwater discharges include pumped ground water, uncontaminated pumped ground water, uncontaminated flow from foundation drains and air conditioning compressor drains. If there isn't any oil in the water, it is probably clean, said Steve. Peter Smith commented how the ordinance reads that animal feces cannot be left on any property other than that owned by the owner of the animal. Why do they let animal feces on their own property? Leslie Hinz said that solution is part of the public outreach and education.

Motion: Peter Smith proposed that we post for a public hearing of the draft Non Stormwater Discharge Ordinance and associated recommended changes to Section 6.5.6 of the zoning ordinance identified in the March 21, 2014. It was seconded by Amy Phalon and passed 5-0.

This is the end of the MS4 portion of this document.

- **Septic Committee**

Lew Stowe said the Septic Committee had its third meeting. They went through the ordinance in detail. They had a presentation earlier this day by a certified septic inspector. They have not gone through the amendment changes. They plan to meet every Thursday. They recommend coming before the Planning Board for board comments. They are looking at steps that a certified inspector would have to take to inspect the septic system. The committee's minutes will be bundled with Planning Board minutes.

- **The Cape Neddick Watershed Plan**

Leslie Hinz presented the Cape Neddick Watershed action plan. There has been a public meeting of the stakeholders. They prioritized what they would like to see done. They are asking the Planning Board to adopt the Watershed Plan into the Comp Plan under the category of Water Quality, then adopt the draft action plan and have it reviewed every three years for updates. Peter Smith commented is an impressive organization and presentation. He asked if the watershed report is part of the presentation. Steve said you want the main document going to the voters. It is incorporated into the Comp Plan by reference. It keeps us from losing track of the document.

Motion: Amy Phalon proposed we issue for public hearing the draft cape Neddick River Watershed plan to be adopted by reference into the main Comprehensive Plan under "water quality" with language that we review the action plan every three years. Peter Smith seconded. The motion passed, 5-0.

- **Harbor & Related Zoning Amendments**

The Harbor Board has been concerned that applicants were showing the Harbor Board one set of plans and then taking a different set to the Code Office. That will be fixed by having the Harbor Board, the CEO, and the Selectmen all signing the same plan, said

Steve Burns. Some dock standards will be transferred to the harbor ordinance, which would administer them, not as usual by the CEO.

- **Massage Therapy**
- **Special Events**

Steve said these are two ordinance amendments for the November referendum that the Planning Board will not have to deal with.

IPads and Digital Review of New Web Page.

The Planning Board received IPads, and the new web page is being launched soon.

Preference votes for May 2014 Amendments

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| 1. Allow additional uses in the northern portion for the Route 1-2 Zone. | 5-0 |
| 2. Harbor ordinance and Zoning ordinance amendments | 5-0 |
| 3. Amend standards for commercial functions on residential lots | 5-0 |
| 4. Alter membership requirements for the board of design review | 5-0 |

Other Business

Findings of Fact for Route 1 Use Permit—28 Brickyard Court

Motion: Lew Stowe made the motion that we approve the Findings of Fact for the chairman’s signature on the Route One Use Permit for a plumbing service business at 28 Brickyard Court. Al Cotton seconded the motion, which passed, 5-0.