

**TOWN OF YORK PLANNING BOARD
THURSDAY, NOVEMBER 8, 2001—7:00 P.M.
GRANT HOUSE**

Present at the meeting were Albert Bibb, Chairman, Barrie Munro, Torbert MacDonald, Dave Marshall, and alternates Dan Remick and Richard Arnold. Vallana Pratt-Decker, Assistant Planner, and Town Planner Steve Burns represented "staff." Patience Horton served as the recording secretary. Mr. Bibb opened the meeting at 7:00 by introducing the panel and asked Mr. Arnold to vote for absent Glenn Farrell. The meeting was televised. The meeting was to be divided between Planning Board issues and Shorelands/Wetlands applications.

MINUTES

Mr. Marshall found objection to the October 25, 2001 Minutes, requesting change in the last sentence at the bottom of P. 2 and into P. 3 to read, "Mr. Marshall motioned to approve the request of the Kittery Water District, to drill and replace the line as proposed, *on condition that the old line and bridge is removed*, and for the Kittery Water District to come back to the staff about *the specifics on removal of the remaining structure*" (with inserted language in italics). He also alluded to inadvertent typos in which Ms. Pratt-Decker was called "Mr." Pratt-Decker, and Mr. Farrell's name was abbreviated to "Farr." Mr. Marshall motioned to approve the corrected minutes, which Mr. Arnold seconded. There was no discussion. All voted in favor of the motion, 5-0.

PUBLIC HEARINGS—PLANNING BOARD

FIRST STEP LAND DEVELOPMENT, MAP 33/LOT 45, 18 BEACON STREET. Sketch Plan review of proposed subdivision. Continuation from October 11, 2001 meeting.

Mr. Burns introduced the matter, stating it was a continuation of an earlier review by the Board, necessary because not everyone on the abutter's list had received notification of the earlier hearing. There were to be no changes in the original proposal that evening.

Paul Hollis of First Step Land Development spoke first, showing a demographic of those abutters not notified (in green on a plan of the neighborhood), necessitating that 30 addresses be added to the distribution list. He gave a short history of the property and the once standing Twin Lights Hotel, which burned in 1937. He focused on the path of drainage from Spring Pond and the creation of the ensuing wetland, which had already forced him to revamp the major design of his subdivision once. As he had stated in the October 11, 2001 meeting, he reiterated his concerns: construction traffic on Beacon Street; establishment of sidewalks on Twin Lights along Beacon Street; and water on the property, a problem about which he expressed resolve about relieving. Bill Anderson of Anderson Livingston Engineers came forward and briefly pointed out the drainage-problem areas.

Mr. Bibb opened the Public Hearing as a continuation of the public hearing held the prior month. Stan Moody of the Conservation Commission qualified a statement by Mr. Hollis, who had summarized various possible uses for the development land. Mr. Moody said those amateur radio antennas are legal everywhere in town, but that common carriers are not allowed in that area. He also pointed to Article 7.6.7 and 7.6.7(b), saying that structures cannot be placed against a setback without staggering by an additional 50 feet for half of the units. With no one else to address the Public Hearing, Mr. Bibb closed it.

An e-mail dated November 6, 2001 from Bob Beaulieu, expressing opposition to the subdivision due to the developer's tendency to let "the natural beauty of the landscape be blasted away," and other concerns, was read into the record.

Mr. Bibb opened Board discussion. Mr. MacDonald stated that in the early '70s, the Town paid to have a drainage study done, reaching from York Beach to the Harbor, by a firm called Cleverdon, Pike, and Barney. That study recommended tying the coastal wetlands together and then building a pumping station behind the Anchorage to the ocean, he said. He thought that the consideration of a massive drainage scheme might be the answer the problems in that area and hoped Mr. Hollis would consider the recommendation.

Mr. Hollis replied that it wasn't unusual for him to go beyond the call of duty. He hoped for cooperation with the Town, as well.

Discussion between Mr. Munro and Mr. Anderson over Article 7.6.7(b) led to an understanding that the 50 ft. staggered setbacks already existed.

Mr. Bibb stated that the ongoing was a Sketch Plan Review, and that there would not be any voting on approvals at that time. He told Mr. Hollis that the Board would see him again, when the Preliminary Plan could be reviewed.

YORK SPORTS CENTER, MAP 94/LOT 51, US. ROUTE ONE. Site Plan and Route One Use Permit review for new facility. Continuation from October 11, 2001 meeting.

Mr. Burns summarized the matter, saying that he didn't receive the Traffic Study in time to review it for that evening's meeting. The traffic and other issues needed to be resolved. The dedicated left-turn into the site would perhaps be necessary at the time of the opening, but he hadn't had a chance to discuss the Traffic Study with both the Police Chief and the Public Works Director.

Kevin Barrett, the President of York Sports Center, came forward and described the project, reviewing information from his previous appearance at the October 11, 2001 York Planning Board meeting. He said the Traffic Study was submitted the prior Friday afternoon. He indicated his group would conform to the condition of the implementation of the turning lane, in agreement with Maine DOT. He stated they would continue to work with a traffic consultant for designs and asked the Board to consider the /package as it was.

John Destephano spoke, showing that entrance stop signs and stop bars for traffic control were being established, and that the well was being moved farther from the leeching field. The administration facility was being modified and the buffer distance increased, he said.

There was general discussion among the Board members about the traffic study issue, which Mr. Burns called the most substantive issue, about which he was not prepared to make a recommendation. The Board decided the merging, exiting traffic between the two properties was also important to review.

The continuation of the prior month's Public Hearing was opened. Abutter Patrick McGarry stated that safety was his primary concern, but that adequate spectator automotive parking, bus parking, and overall aesthetics were also his concerns. Mr. Barrett replied that as the business expands, the hours it is used, not the hourly number using the facility, would expand. With no one else to speak, Mr. Bibb closed the Public Hearing.

Mr. Burns said that the application was complete enough to be accepted for consideration. Mr. Arnold made a motion to review the application, which Mr. Marshall seconded. The motion was accepted unanimously, 5-0.

Discussion went to the driveway flow of ice, to which Jack Keener, the driveway engineer, answered, by showing how the grade of the driveway will direct the flow. He discussed the number of entrance (1) and exit lanes (2, to help a people going north), which was followed with discussion of merging traffic waiting to exit.

Mr. MacDonald raised the issue of the wisdom of continuing to drill wells along that stretch of Route One, naming many businesses with wells in the area. Mr. Bibb stated that it was not practical to bring water up for this project. Mr. Burns said that there would be applications coming before the Board in the future, involving that area of Route One, in which bringing water to the area will be an important issue.

Mr. Munro raised concerns about the screen and buffer between the Sports Center and the Dentist's office.

Mr. Barrett asked for further clarification about turning lane and its implementations and restrictions on building construction. Mr. Burns said that from looking at the Traffic Report, it seemed to be recommended that the turning lane be there when the building opens, but that it doesn't have to be there during construction.

In discussing the appearance of the front of the building, Mr. Destephano said that it was, as had been explained before, a corrugated metal building. There was general discussion about the attractiveness, or lack thereof, of corru-

gated metal buildings. Mr. Marshall said that at the last meeting, the attractiveness of the building was not made an issue. Mr. MacDonald asked if there were written standards for the design of the building and received a “no” answer from Mr. Burns.

Mr. Munro moved to accept the design of the building, as proposed, which Mr. MacDonald seconded. All voted in favor of the motion, 5-0.

The open issue of the merging traffic and the Traffic Study were identified as the current deterrents to the project. Mr. Marshall asked if the Board was being reasonable, putting the issue off. He asked to bring it forward again in 2 weeks. Mr. Arnold brought up the concept of the “money burn rate,” costing the applicant money. Mr. MacDonald was prompted to suggest making a conditional approval, since the turnout lane was the only issue. Mr. Burns said that he is not comfortable with conditional approvals, and that it was more complicated than making a yes/no decision, with 5 lanes also being considered, not just three. Mr. Marshall suggested compromise by putting the matter on the agenda at the next meeting.

Mr. MacDonald motioned to defer the matter until the November 29, 2001 meeting, which Mr. Marshall seconded. All voted in favor of the motion, 5-0.

HELEN ROLLINS LORD, MAP 52/LOT 10, 2 NORWOOD FARMS ROAD. Change of non-conforming use (change single-family and dentist’s office to duplex).

Mr. Burns introduced the application to change a property from one non-conforming use to another. Currently the property is an office and residence. The change is to eliminate the office and make it into a duplex, as it originally was. Mr. Burns had no issues with it. The applicant had shown that there is no adverse impact on the neighborhood. An abutter had come in to the office, examined the application, and expressed no concern.

The applicant was asked to come forward, if she would like. Helen Rollins Lord stepped to the podium and said that it will be nice.

Mr. Arnold and Mr. Marshall motioned and seconded the opening of the Public Hearing. When no one came forward to speak to the application, Mr. Bibb closed the hearing. Mr. MacDonald and Mr. Arnold motioned and seconded the approval of the motion to allow the changing of one non-conforming use to another. There was no discussion. All voted unanimously in favor of the motion, 5-0.

PUBLIC HEARINGS—SHORELAND APPLICATIONS

Stan Moody, Chairman of the Conservation Commission, joined the panel.

THOMAS/NANCY CACCAVARO, 48 DESMOND LAND, MAP 96/LOT 5C. Review of requested new information.

Vallana Pratt-Decker, Chairman of the Shorelands/Wetlands Permit Review Committee, summarized the Denied Final Findings of Fact, which had been introduced during the August 15, 2001 Shorelands/Wetlands meeting. The Caccavaro originally wanted to pave some parking areas. There were site violations and permit violations on the property. A denial was suggested because the violations weren’t corrected. Ms. Pratt-Decker updated information: the parking on the right-of way needed to stop and the re-vegetation had to occur. The Caccavaro had agreed to that. The deck expansion and electrical inspection, as well as a several-item punch list had to be finished (recording secretary momentarily lost accidentally unplugged computer access at this time). Other changes, described in the Findings of Facts, were also requested. Mr. Caccavaro had originally wanted to modify the gravel parking area to a paved 2-car parking area. Now he was asking to removing the non-conforming 2-car parking area and narrow it to a 12-ft. stony area that will improve storm retention. Their neighbor, Mr. Pajak, a disabled driver, wanted the right-of-way repaved that they own, for clear access to his own home. The applicant was not able to attend the meeting.

Mr. Munro and Mr. Marshall motioned and seconded the opening of the Public Hearing. Abutter, Mary Marcinkiewicz came forward to say that she used to mow the right-of-way, but now, due to the Caccavaro’s landscap-

ing, the terrain has become rough and overgrew. It is a horrible-looking piece of land, she said. She hoped the right-of-way could be put it back in shape, so it can be mowed.

Russell Desmond spoke, saying that his parents had been abutters since 1944. He was concerned about the parking, saying that Mr. Caccavaro had appropriated a part of the right-of-way for his personal parking, and has numerous cars on the lawn. He said that Mr. Caccavaro dumped fill in there, doesn't maintain it, and that it is an eyesore. Also, there is a runoff from it, he said. No one else came forward to speak.

The Public Hearing was closed. Mr. MacDonald asked who owns the right of way? Mr. Desmond said that it was established in 1969 to access all the lots in the subdivision and was jointly owned for the use of all people for accessing Long Sands Road.

Ms. Pratt-Decker stated that Items 1, 2, 3, and 4 were Code Enforcement violations, and that Mr. Caccavaro needed to bring the property into compliance before the application could be re-submitted. Conformity would include tearing out the violating patio. There was discussion among the Board about the coding issue.

Mr. Moody stated that the denial was drafted without emphasis on the Shorelands / Wetlands violations. He referred to 8.15, Paragraph 1 of the summary, as well as the third paragraph of No.1. He said that the lot size coverage figure, which stated that the property is typical of the neighborhood, was missing. Also, information about setbacks was important. The Natural Resources Statement needed inclusion. The Standards of Review, Land Use Standards, and Wetland Standards were also important. Ms. Pratt-Decker replied that in her effort to "crank these out," she has abbreviated sections of the Findings of Fact.

Mr. MacDonald moved that the application go back to Code Enforcement for clarification of code violations before it can be re-submitted to the Shorelands/Wetlands Committee. Mr. Arnold seconded the motion. In discussion, Mr. Munro stated that items in the Findings need to be followed by the words "denial" or "acceptance." There also was brief discussion about the development of policy regarding re-vegetation. Mr. Bibb brought the motion to vote, which passed unanimously with a 5-0 vote.

RONALD/KIMBERLY BUGBEE, 15 COUNTY ROAD, MAP 96/LOT 5C. Review of requested new information.

The Bugbee agenda item was not covered at the meeting.

PHIL WHITTAL, 99 BALD HEAD CLIFF ROAD, MAP 4/LOT 26. Request for Shorelands/Wetlands Permit to remove existing 1st floor bedroom roof, add second floor bedroom with bath, replace existing front door roof, construct a cosmetic gable and re-roof entire structure.

Ms. Pratt-Decker summarized the Approved Draft Findings of Fact, saying that the home is within the 100 ft buffer and subject to 30% expansion regulations in the Shorelands code. The proposed removal of a part of the roof and in order to build was calculated to be within the allowable 30% expansion. She recommended approval.

For the record, an e-mail from Dr. Weseman, an abutter on Bald Head Cliff Road, inquired if the new second story would interfere with his view.

Mr. Moody stated that information, including calculations of the expansion, was missing from the application. He questioned if the setback would affect approval. Mr. Moody and Mr. Munro stressed that the roof height had to meet requirements. Mr. MacDonald discussed concern about vegetation, runoff, and the apparently inappropriate location of a lawn. Applicant Phil Whittal responded by showing a photo of the lawned area between house and ocean. He then described the enlargement as a straight expansion above an existing bedroom for which no heavy machinery would be required. He said he could not see abutter Weseman's home from his home, at all.

The Public Hearing was opened with a motion and second by Mr. Arnold and Marshall. No one spoke to the application, and it was closed again.

Mr. Arnold moved to approve the application, noting that the measured height of the addition had to be added to the Findings of Fact, and that any changes in the setback distance from the high water mark caused by the addition were also to be added to the Findings of Fact. Mr. MacDonald seconded the motion. All voted in favor of it, 5-0.

DAN/KATE GARDOQUI, 318 MOUNTAIN ROAD, MAP 96/LOT 56. Request for a Shorelands/Wetlands Permit to construct a single-family dwelling, farmer's porch and deck.

Ms. Pratt-Decker introduced the Approved Draft Findings of Fact, saying that the Gardoquis plan to construct a one-and-a-half story home with an access driveway that needs to cross a stream and a wetland. The plan meets the 100 ft wetland setback. She recommended approval. In updating the Findings, she said that the Gardoquis said that the application from a previous owner is not accurate, but the site plan is correct. It was still necessary to make sure the septic setbacks are accurately met. Mark Badger had said that the site was an old, illegal subdivision that the Code Office had made them undo. The Gardoquis had been very cooperative. The driveway crosses the stream and wetland at the narrowest point of impact. For the record, she presented a letter from abutters named Abracer, who stated they had no objection.

When asked to speak, Mr. Gardoqui stated that the footprint facing the wetland would not be changed by the current plan.

Mr. Arnold and Mr. Marshall motioned and seconded the opening of the Public Hearing. No one rose to speak to the application, and the hearing was closed.

Mr. Moody began the discussion concerning the 50-foot right-of-way that went to the lot parcels that constituted the illegal subdivision. Ms. Pratt-Decker stated that Mark Badger informed her that the Board should void the right-of-way from the old, illegal subdivision. Mr. Bibb stated that he thought that was within the power of the Planning Board. Mr. Marshall's concern was over the possibility that someone nearby has access to the right-of-way, but Mr. Remick thought that the right-of-way was most likely eliminated when the five lots were eliminated. Ms. Pratt-Decker said that the CEO had voided the five lots. Mr. Bibb said that the right-of-way didn't exist on the deed.

Mr. Moody stated that because the application is an older permit application, which allows the wetland to be crossed, mitigation is required, but none is proposed. Mr. Bibb said that the mitigation should be that the owner would obtain the existing wetland in its existing state. He worded the motion as follows: The mitigation is that they will maintain the wetland in its natural state and add the culvert. Mr. Arnold seconded the motion, which passed with a vote of 5-0.

LOUIS/PATRICIA JELLOE, 28 PARLIN DRIVE, MAP 27/LOT 93AA. Request for a Shorelands/Wetlands Permit to construct a single-family dwelling, which includes 2,500 sq. ft. of wetland fill.

Ms. Pratt-Decker summarized the Approved Draft Findings of Fact, describing the property as a difficult, non-conforming site on the Nubble, currently under a Purchase and Sales Agreement. 85% of the site is wetland. The application does not demonstrate mitigation for loss of vegetation.

A letter from owner Barbara H. Chenevert was read into the record. She detailed the 1988 purchase of the lot and a history of job security difficulties and divorce, which all complicated the possibility of the planned 1990 home construction. These elements led to the current P&S agreement, which was deeply marred by its new wetland status and created a state of loss and distress for her. Most notably, this was the last buildable lot on the street. Other houses had been built or expanded around it, as she has continued to pay taxes, water, and sewer on the property.

Mr. Munro stated that he was on the Board when her earlier permit was approved. The same arguments were now, as they were then: the lot may or may not have been wet before the other houses were built and drained onto it. Provision of 11.4.7 would be the basis for approval, he said. Mr. MacDonald and Mr. Marshall motioned and seconded the opening of the Public Hearing.

Maureen McCarthy, of 30 Parlin Road, stated she had owned her home for 15 years, and that there had been major flooding problems for many years. During Hurricane Bob, water went all the way through her house, which shifted,

damaging the trusses on the top of the house to the point where the nails came out. She built a slab to stabilize the building. When the road was redone, they discovered a drainpipe that had collapsed.

Cosmo DiBiase spoke next. He had built his place with a cellar in 1977 at 25 Nichole Road. In 1998 or 1999 someone put in a 16" pipe, he said, which is now higher than it was. Suddenly he had 12" of water in his basement, never a problem before. He said that Mr. Silvestris was responsible for the pipe. He said that building on Chenevert lot was not going to hurt anyone, and he wanted the applicant to be able to build. But if that particular pipe were corrected, it would solve the water problem, he said. Mr. Arnold asked to have the location of the proposed house and problem-pipe shown to him on a plan, which Mr. DiBiase did.

Mike Livingston from Anderson Livingston Engineers came forward, showing the plan for the original submission. He said that that discharge from the property, as well as everything that runs off the Nubble, leads through swails and culverts, eventually flowing under Route 1A. Mr. MacDonald said that there was no fix for the whole community, to which Mr. Anderson agreed, in that the soil there drains poorly to begin with. However, Mr. Anderson said, "It is not a naturally created wetland." Placing a house on a floating slab on 18" of stone of a good size—not heavily compacted—will allow water to flow under the slab, he said. Also, the amount of the upstream drainage remained unknown.

Mr. MacDonald stated that the Town had permitted the development to occur, causing these kinds of problems. "We need to make it easy for these people to do what they want to do. We have an obligation to take this on and not deny this," he said.

Mr. Moody reminded the Board that though the wetland is not of natural ecological value, the ordinance still has to be upheld. He spoke about post-development flow that needed to be the same or less than pre-development flow. A 0.23 cu. ft. per second increase was already measured, he said, calling it a significant increase. Secondly, flood storage capacity is another area of ordinance concern. The loss of flood storage capacity has to be explained with demonstration of how it is being made up. When Mr. MacDonald suggested giving the problem back to Mr. Livingston's firm for solution, Mr. Moody, who qualified that he was not proposing a denial by highlighting the two ordinance concerns that had to be satisfied, agreed that engineered solutions were available.

Mr. Munro motioned to table the application, which Mr. MacDonald seconded. In discussion, Mr. Arnold suggested conditional approval, which developed into re-statement of the motion: To grant conditional approval, subject to compliance with the old ordinance. Mr. Marshall seconded the motion, which passed 5-0.

OTHER BUSINESS

Mr. Bibb stated that a member of the Planning Board had to sit on the Shorelands / Wetlands Permit Review Committee. Mr. MacDonald volunteered to do so. Mr. Bibb identified himself as a back up. Mr. Arnold moved that Mr. MacDonald represent the Planning Board at Shorelands/Wetlands Permit Review Committee meetings, with Mr. Bibb as the back-up representative. Mr. MacDonald seconded the motion, which passed 5-0.

The meeting was adjourned at 11:00 P.M.