

York Planning Board
Thursday, January 13, 2011, 7:00 P.M.
York Public Library

Call to Order, Determination of Presence of Quorum

Board Chairman Lew Stowe called the meeting to order and determined the presence of a quorum. Four board members were present: Todd Frederick, Tom Manzi, Tom Prince, and Lew Stowe. Torbert Macdonald and Dave Woods were absent. Tom Prince was asked to vote in place of Dave Woods. Town Planner Christine Grimando represented Town staff. Patience Horton took Minutes. Ben McDougal, Shoreland Resource Officer, spoke during the Barrell's Grove hearing. This application hearing lasted four and a half hours and was televised.

Public Input

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

No one came forward to speak.

Field Changes

Maine Commerce Center

Christine Grimando explained that this field change is a revision of a previously approved site plan for the Maine Commerce Center, owned by David Webber. Applicant representative Tom Adams seeks an additional compressor pad for a refrigeration unit that will clear the side setback.

Todd Frederick asked about the decibel level for the added unit. He said people across the street might hear it. Tom Adams said the unit is highly efficient and relatively quiet, equivalent to a house air conditioner. Tom Prince said the abutters should be given a chance at a public hearing to review the application. Christine Grimando said abutters are not usually notified about field changes.

Motion: Todd Frederick moved to approve the two compressor pads. The 3 x 5 pad may require screening with both conifer and stockade fencing per Town CEO. Tom Manzi seconded the motion. The motion passed 4-0.

Minutes

Review and approve draft minutes.

Minutes of the **December 2, 2010**, Planning Board Workshop, written by Missy, were reviewed. There were no changes required.

- **Motion:** Tom Manzi moved to accept the December 2, 2011 minutes, as written. Todd Frederick seconded the motion, which passed 4-0.

Minutes of the **December 9, 2011** Planning Board hearing, written by Patience, were reviewed. Lew Stowe requested changes.

- **Motion:** Todd Frederick moved to accept the December 9, 2011 minutes as amended. Tom Prince seconded the motion. The motion passed, 4-0.

The Minutes of the **December 16, 2011** meeting, held at the Senior Center, written by Patience, were reviewed. There were no corrections.

- **Motion:** Todd Frederick moved to accept the minutes as written. Tom Prince seconded the motion. The motion passed, 4-0.

Application Reviews and Public Hearings

Barrell's Grove 59 Beech Ridge Rd. Map & Lot 0086-0045-A. Continued Preliminary Review of a Major Subdivision application

Engineer Bill Anderson represented the applicant. Christine Grimando had written a memo with four major points for this hearing.

Steve Piper of OxyPro Aeration Systems (Falmouth) described the anaerobic treatment system that reduces the strength of the wastewater and decreases the required size of the leach field. Wastewater is 98% cleaner than that of other septic systems. It is proposed that each house will have its own OxyPro. The systems come with a two-year maintenance agreement including: two visual and olfactory inspection visits each year, responses to alarm calls, and needed maintenance. Extended plans with the same services are available for \$450 each subsequent year. There is an OxyPro residential system in York on Adams Road.

The systems have been around for 10 to 20 years, continued Steve Piper. Several companies have different designs with the same aerobic treatment concept. In case of power outages, if water is being used, pumps displace the water. Leach fields are placed from 50 to 100 feet away from the systems.

Lew Stowe said he is concerned about the plumes noted in the Sweet and Associates report. If the neighbor's system joins this system, how do you know which isn't working right? Bill Anderson read directly from the Sweet and Associates report that the neighbor's system will not affect this system. This system reduces the risk of environmental reaction. It puts fewer contaminants in the leach field because of pretreatment in the tank. The system has a life capacity of 8 to 10 years before the blower has to be rebuilt.

Bill Anderson said that this is a centralized system, each unit being completely individual. The system is the concern of the homeowner, just like with a normal house. Lew Stowe said there is potential for contaminating the York River. Bill Anderson said a soil scientist can be part of determining location. The leach fields are 15 to 20 feet apart. Lew Stowe said the longest connector is 1,500 feet between the house and the field. What safeguard is there that there is no leak in the 1,500 feet? Bill Anderson said the pipes will be buried in soil that won't let the stuff go anywhere. If there were a problem you would dig it up and figure out whose leak it is. Todd Frederick asked what the plan is for the developer to manage catastrophic failure for the pipe. He thought a flow meter might do it. Tom Manzi asked about pump failure. Bill Anderson said that the loss of

pressure causes an alarm. A meter detects the improper amount of amperage and triggers an alarm.

Shoreland Resource Officer **Ben McDougal** said he had inspected the mounds on the property with Town Planner Christine Grimando and Kenny Gardner and found evidence of 15 backhoe test pits and four or five 35 inch test borings. The soils were consistent with what were in the reports. Per ordinance, as of July 1974, no septic system can be installed on anything manmade surface.

Ben McDougal said that he has faith in these aeration products like Oxypro, but maintenance is very important. His concern is that, in 30 years down the road, the owner might choose not to maintain it. He said there should be the requirement for annual maintenance. Christine Grimando said the Board could ask for secondary treatment.

The Chairman opened the **Public Hearing**. **Christine Tennant** said there are eight leach fields 40 or 50 feet from her back yard. She has had flooding problems in her basement for two or three years. She wonders how much more water there will be in her basement, if eight more systems are put in. Her yard will become a swamp and a swimming pool, she said. At the last meeting, it was the leach fields will be precisely placed, but that does not give her confidence. She is the one dealing with it. She does not want to go five years down the road to have a leach field fail. The soil is so bad that it feels crazy to put so much into one small area.

Eric Hopkins, One Saltwater Drive, also represented his neighbors the Genettis, the Rubins, the O'Ryans, and the Perinas. Each of the 47 members of the Riverwood Homeowners Association pays \$1,000 annually to keep things running and have a reserve fund. What is the net effect on the whole thing? It doesn't make any sense that each household has its own individual leach field to maintain. The thing is the group septic system is necessary. Annually, the existing septic systems process 2.5 million gallons of water through 8 leach fields, he said. The land is small. All the new stuff will join in this. Add ½ million gallons of water. Think of the 100-year storms that happen about every two years now.

Abutter **Jean Holbrook** said it sounds like a great system, but she wonders how the reduction is monitored. It is important to realize that these leach systems are smaller and reduce the hydrogen. What if one failed and discharged waste into a field that is ½ as big? How long does it take to get fixed? You need legal and financial responsibility about failures. It will be hard for CEO to enforce. When a common system that services more than one house has a house sold, the homeowners association takes over. She did not see where this is different. She stressed the importance of management and maintenance programs.

Linda Goulette said the whole system sounds great. But they've never gone that far with pipes (1,500 feet) and there was no inspection of leach fields. The leach fields are in her back yard, too. **Close Public Hearing.**

Archeologist Tad Baker said his final report will be coming soon. He handed a copy of the MHDC proposed archeological easement to Christine Grimando. It will reference what can and cannot take place on the property. We do not want any disturbance or alteration, including construction, harvest, and excavation--with the exception of cutting trees measuring less than 12" and 4 feet above ground. No root stumps can be pulled.

Bill Anderson showed a plan of the open space area. Per 7.1.3, at least 10% of the property must be delegated as open space either for the purpose of open beauty, including septic over a grassed area, recreational uses, or habitat. A portion can be added as recreational area. There is no wetland in there.

Christine Grimando replied that the paper right-of-way has to come off there as part of the contributing part of the open space. The grayed off area is just a leach field as proposed, not part of the 10%. She said the regulations for the space call for something that makes sense of the site, like beauty, habitation, or recreation. She asked Bill Anderson how they plan to meet the requirement of the open space, as nothing has been issued. Bill Anderson said the scenic beauty is being maintained. Christine Grimando asked for a plan that shows the qualified open space.

Lew Stowe re-opened the **Public Hearing**. Abutter **Richard Mirick** asked if the open space will be part of the community. Is there a public road? What does this community bring to the Town of York? What is the purpose of walkways and river access if it doesn't give community access?

Diane Dennett said public space is for everybody. If the homeowners have open space, isn't it for everybody? Lew Stowe said there will be no public boat launches because of the archeological restrictions. He **closed the Public Hearing**.

Lew Stowe said that the leach field will be permitted by Health and Human Services. HHS permits and approves centralized (vs. decentralized) septic systems. The hearing ended.

Keitts Point Access 205 Beech Ridge Road/18 Claude McIntire Road. 0086-0036/0086-0031-D Application for a Shoreland permit for Road Construction, and a Special Use Permit for the Resource Protection District. Continued discussion of proposed road layout

Applicant David Gross described the proposed driveway that will connect one parcel of his property to another parcel by crossing the McIntire property. Al Frick had laid out the original survey, but there was an error. That drawing was placed the road further from the river than the survey has it. David Gross presented a new survey this evening so that when he goes for final application, he said, there will be no surprises.

Christine Grimando explained that last time David Gross was here, he got a confirmation of the road layout. Now he is back to re-do that layout, so he can get the agreement and work together with his neighbor. The road has shifted closer to the river, and he is just

short of that 50-foot line. If he were over it, it would be a dead end for the application. The area the peer review gave us has been changed. Christine Grimando explained the shifts in the road. The buffer is reduced, but we need to make that stay.

The members of the board agreed the changes do not substantially change anything.

The **Public Hearing** was opened. **Diane Dennett** was concerned about referring to the driveway as a road; it is a 12-foot driveway. She said the McIntire property is wetland. By not having the driveway set back, it gets flooded at super-high tide. She asked where the electrical is going to be. **The Public Hearing was closed.**

Motion: Todd Frederick moved to approve the amended, proposed right-of-way easement to the McIntire property as shown on the overlay site plan dated January 3, 2011, as adjusted to impact the wetlands as shown in the conceptual Al Frick plan. Tom Prince seconded the motion. The motion passed 4-0.

Bayberry Ridge Units 9 & 11 Orin Lane Map & Lot 0094-0084-R Application for a Revision to a Previously Approved Plan. Request for increase in allowed density in the Shoreland Zone

Christine Grimando said this is a revision to a previously approved plan for the development of an elderly overlay conjugate. The applicant is requesting some conservation land in a separate development exchanged for density credits for Bayberry Ridge. A duplex straddles the Shoreland Zoning land. The limits are stricter in the Shoreland zone than in the other. The full development that was approved for can't be built. He has met his maximum density for the Shoreland zone. He asks the board to allow the density credit so he can build out Bayberry as approved.

Christine Grimando said she could not figure out how to approve this request within code, but she encouraged him to apply. Tom Prince said that this is about whether we have the jurisdiction to waive this. The Board of Appeals is the only board with the power to waive something. To get there, he has to come to us first. Tom Manzi said Walter Wood has the right to go to the Appeals Board, if he feels this board has made the wrong decision.

Lew Stowe opened the **Public Hearing**. Walter Woods said his company made an error with reference to the structure. He disagreed with Christine Grimando that only the Appeals Board can do this transfer. Since the Planning Board "did it," the Planning Board should undo it. He pointed out the conservation area and the mitigating area. For putting 10 to 12 acres aside for conservation area, he would be granted density. He showed the first approved plan, a plan of Phase 2 (100 units), and a Plan Note referring to the Planning Board's authority. Christine Grimando said there is nothing in the plan note allowing the planning board to transfer density from one property to another.

The chairman opened the **Public Hearing**. **Joe Amend**, president of the Bayberry Ridge homeowners association, spoke in favor of the exchange. Bayberry Ridge is a 55+-

planned community. 15 units have been built and 14 are occupied with one occupancy pending. Fees cover landscaping, snowplowing, maintenance, tax filings, etc. The more residents, the lower the expenses for the rest of us, he said.

Rita Calman of Bayberry Ridge said she does not oppose of the transfer. The 2003 board could not make changes to the Shoreland Ordinance. If these additional units are agreed upon, it would not exceed the 2003 rulings. It is important to follow due process. She wants things to be consistent. The **Public Hearing** was closed. Lew Stowe said it would be right to write a recommendation that the Planning Board is rejecting it, but it should be approved. Christine Grimando told the Planners they should send a representative to the Appeals Board meeting, to express how they feel. The Board discussed alternate approaches for approving the switch of credits, including waiving. Todd Frederick said the Board's taking the authority to making the exception would have legal repercussions, creating precedents for a decision that might be a technical error.

The **public hearing was re-opened**. Rita Calman is concerned that by the Planning Board's taking authority and the decision to waive, the Planning Board would not be following due process. **Joe Amend** said that the planning board is a government agency, and 15 years ago they said it was okay. That established use in common law. Todd Frederick replied that the board does not have authority to waive Shoreland authority.

Tom Prince said he would lean toward board approval, as a one-time use, based on the intent. Tom Manzi said the board has not found enough to see that we are strong about it being in our jurisdiction. Christine Grimando said that the previous planning board did not think about jurisdiction, either. Lew Stowe said the board is held to the interpretation of the ordinance.

Walter Wood said he would go the Appeals Board, if he has the full support of the Planning Board.

Motion: Todd Frederick moved to deny the request for an increase in the allowed density in the Shoreland Zone. Tom Prince seconded the motion, which passed, 4-0

Other Business/Adjourn

Hancock Wharf Mylars and Findings of Fact

The Hancock Warf Findings of fact were reviewed.

- **Motion:** Todd Frederick moved to accept the Findings of Fact for the Hancock Warf. Tom Manzi seconded the motion, which passed, 4-0.

The board signed the Findings and Mylars.

The meeting was adjourned at 11:22