

**York Planning Board**  
**Thursday, September 13, 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., alternate Tom Prince (who had been asked to vote as a full member), Lew Stowe, and Dave Woods. Alternate Dave Glazebrook was present. Christine Grimando, the Town Planner, was absent. Community Development Director Steve Burns represented staff. Patience Horton took Minutes.

**Public Forum**

**Open to the public to address any issue other than topics scheduled for a public hearing.**

**Dave Lombardi** has the Cape Neddick House on Route 1. His tenant has an ice cream store with picnic tables. He wants to create a stone patio for that area, a structure under the tables. His question: Can he draw a sketch on top of the previous plan instead of having a new plan engineered? The use is not changed. After discussion, the board said he could draw in what he intended on the old plan. It would be enough.

**The Connector Road:** Lew Stowe read the Board's position on the Connector Road. It is on hold by the applicant, Town of York, because of violations. DEP issued violations to the permit of approval. There are 12 conditions of approval that have been monitored by a third-party engineering group. Community Development issued a series of violations to SMRT, the leading engineering group. The violations include both the police station and the connector road. The planning board has authorized the Steve Burns, the Community Director, to review the total ordinances for additional violations in the action of the implementation. The September 27, 2012, workshop will be dedicated on how to proceed forward with the review of the project.

Lew Stowe read his own statement. The application cannot be reviewed until the stated violations are resolved to the satisfaction of both the State (DEP) and the Planning Board. Regulation 11.2.7 says that no plan will be reviewed by the Planning Board as long as the developer is in default.

Steve Burns said that the board does not have any role in determining whether there is a violation. "I cited it." The State and Federal agencies will release theirs. They didn't technically cite a violation. They did it by email. It is essentially a written warning. I gave formal letter citation. I also acknowledged the proposal to restore that vernal pool buffer and wetland. If Army Corps will accept their proposal, I will accept it. You have to receive a comprehensive plan and a commitment within a specific amount of time.

The citations I gave overlap the federal issue of the vernal pool buffer. There is Shoreland and a Wetland crossing next to a vernal pool. The State issues are drainage, not accounting for the cleared areas for stockpiling and then cutting buffers that were supposed to remain. A place on

the September 27 agenda has been cleared for the engineers. They are working on this, but might not attend that meeting. I (Steve Burns) will be giving the report on the code issues. There are not stop work orders on this project. State, Federal, and Local Code Enforcement have not stopped the project. There is still activity on the project. They can restore, but they cannot cut. They don't have a building permit because water and sewer have not signed off. That's a utility hold. Water and Sewer Districts are holding the police station up. That's where the focus of the engineer is. If the survey is wrong, there are big problems. The cutting issue is a mistake on the part of the guy with the chain saw. A wrong survey is a huge problem.

### **Minutes**

The minutes of August 23, 2012 were reviewed and corrections were requested.

**Motion:** Lew Stowe moved to approve the August 23 minutes as amended. Dave Woods seconded the motion, which passed 4-0. Tom Prince was not at the meeting.

### **Field Changes**

There were no field changes.

### **Application Reviews and Public Hearings**

**Change to Parking Lot; 4 Main Street Map & Lot 0023-0008. Applicant Kearsarge Parking Co, LLC. Replacement of one parking space with a dumpster in response to violation created by former owner.**

Though Dave Woods has no financial interest in this application, he recused himself because an abutter said that the dumpster should be by Dave's house. Alternate Dave Glazebrook took his place.

JoAnn Fryer of CLD Engineers said there is a 2007 approval for 43 parking spaces. 9 spaces were dedicated to the Atlantic House, and the rest to the Kearsarge house. Both parcels were later bought by one owner. Prior to that purchase, in 2010, the Town obtained an easement and attached a box culvert. Because of that, there was a reconstruction of the parking lot layout.

Prior to the purchase, the Atlantic House moved a dumpster into the parking lot, which resulted in a Town of York code violation. The applicant has come tonight to remedy that violation so the owners can move ahead with the development of the Kearsarge House. They propose to move the dumpster to a fenced-in area adjacent to the propane tanks with the net loss of two spaces, one from the culvert and one from this dumpster change. There will be 41 parking spaces. We are asking for approval for that, she said.

The chairman asked that someone move to accept the application as complete. Torbert Macdonald said, "So moved."

The Chairman opened the **Public Hearing**. Emails from abutters **Thomas Cote** and **Mark Gay** expressed concerns about garbage truck noise and odor. JoAnn Fryer said that Mark Gay's garage is as far from the dumpster as it is at the fence at the center of the parking lot. She

described an alternative location for the dumpster in the middle of the parking lot with defined parking spaces and screening with stockade fence.

Abutter **Dave Woods** asked for a concrete pad at the cost of about \$700. Dumpsters slide and are quieter slid onto concrete instead of gravel. Pickup is between 5:30 and 6:30 a.m.

Abutter **Mike Pascinici** said we still don't know what the Atlantic House is going to do with the trash when their violation is lifted. Steve Burns answered that this violation is not tied to the Atlantic House.

**Motion:** Tom Prince moved to accept this plan for the revised site plan and to keep the proposed dumpsters as depicted. By adding the cement base it would be a better design for this, and that would be required. Lew Stowe seconded the motion. It passed, 3-2, with Torbert Macdonald and Dave Glazebrook against.

**New House in Resource Protection Shoreland: 38 Mill Lane; Map & Lot 0089-0037-B; Applicants Bill Dignan and Jim Smith; Consideration of a Special Use Permit.**

Steve Burns called this application straightforward. The house is almost entirely in Resource Protection. He recommended the board accept the application as complete. The driveway is near the wetland, which is across Mill Lane. It is supposed to be set back 100 feet, but the Planning Board can approve it if the setback is over 50 feet. He recommended approval.

**Motion:** Lew Stowe moved to accept the application as complete. Dave Woods seconded the motion, which passed, 5-0.

Bill Dignan said the driveway is 55 feet from the wetlands at the closed point.

In **Public Hearing**, Janice Cloutier said she used to own the property. How will this impact the brook? She cares about the protection of the property and the wetlands.

**Motion:** Dave Woods said I'd like to make a motion that we grant a driveway setback and reduce it down to 50 feet from the 100, as shown on the plan. Lew Stowe seconded the motion, which passed, 5-0.

**Motion:** Dave Woods said I'd like to make a further motion that we approve the application as submitted for Map & Lot 0089-0037-B. Lew Stowe seconded the motion, which passed, 5-0

**Motion:** Dave Woods moved that we instruct the Chair to sign the Findings of Fact for the application submitted for Jim Smith and Bill Dignan for Map & Lot 0089-0073B. Tom Prince seconded the motion, which passed 5-0.

**Sketch Plan for 33 Lot Subdivision 4 Turner Drive, Map & Lot: 0099-0001-E. Applicant: DLJ Corp with York Housing and Great Works Land Trust. Initial discussion about project concepts**

Steve Burns introduced this as a 33-lot subdivision off Logging Road, which is off Turner Road, which is off Route 1. It is on 149 acres. The target market is modest income. There is Wetland and Shoreland jurisdiction. The sight distance on Logging Road is an issue. Traffic impacts two existing house. Duane Jellison said the project will have 15% (5) workforce housing administered through York Housing Authority.

Joe Cheever from Attar Engineering showed Zoning, USGS, and Shoreland Zoning maps. The watershed splits into two directions, Cape Neddick River and Perkins Cove. It is on the east side of RES-2. Elaborate calculations showed there are 85.5 net buildable acres out of 150. Great Works Regional Land Trust is willing to take the open space.

Traffic comes on out through the frontage on Turner Drive opposite Stony Brook. The road goes past two abutters. It is a 50-foot right of way. The gravel road will update to a road 25-feet wide that meets the York ordinance for a town road. It will come out to a cul-de-sac at two different locations. We will need a Maine DEP site location and development permit for this site. There will be a quality standard and a treatment standard for stormwater, individual wells, and well-designed individual or community septic design. A hydrogeologic system will show that the nitrates don't increase the overall nitrate levels to the State standard.

Torbert Macdonald moved to open the Public Hearing. **Dave Linney** is a direct abutter with Walnut Hill Nurseries. Will there be any plan restriction about the number of houses reserved for workforce? His land has been flooded when Logging Road drainage wasn't effective. He wants to see that all lines are well flagged in different tape colors. The septic systems should not be coming my way, he said. Septic system integrity might mean grouping or making a community system. A larger septic system is easier to maintain than 33 small ones. Logging Road is getting busier. Sight distances are very important.

Steve Burns read an email from **David Ballou** drawing interest to the single road access and the poor sight distance. **Caleb Smith** has his child's safety to consider. He wants the increase in traffic addressed, because Logging Road is a cut-through to get to Mountain Road and Clay Hill Road.

Tom Prince asked how a 30-foot wide New England Tel & Tel easement that runs through the property will affect the subdivision. Joe Cheever said there's nothing in the easement now. We think it's discontinued and will know that for sure before the preliminary, he said. Dave Woods said to make sure with Fire that the development can be done with one egress. Joe Cheever said there is at least a 300 feet sight distance on either side. The speed limit on Logging Road is 30 MPH. Duane Jellison said that he already meets the town standards.

Torbert Macdonald read from Christine Grimando's January 2012 memo, which says it doesn't seem the applicant designed the site as required under Article 7. Our cluster subdivision standard requires that the open space design be done first and the built areas be designed to respect the best open space design. In this case the open space is all the resource-protected areas on the lot, which is the majority of the property with the maximum number of lots crammed into the upland areas. There is not a sense of careful consideration of site design or any indication that the design involved the input of the proposed easement holder. I am confident with the

small amount of information submitted that the number of lots proposed for this cluster design far exceeds the number allowed under a conventional subdivision design, she wrote, considering how much of the property is in resource protection and the configuration of those resource protection areas across the land.

Torbert said to the applicant that you have the call as to whether to go cluster or conventional. That is the flaw in the way this is presented. This needs to be conceptualized as a rural village and to community. It is a cluster design that would have been better off as a conventional design. He advised the applicant to try to communalize as much of the septic as possible.

Steve Burns said there are two key things the board needs to talk about. One is the single access and the other is future connectivity. The folks at Great Works Land Trust were adamant. They don't want the open space if there are connections going to other properties. They don't want this to feed more development. That was a deal breaker if you are going to try and force connections out toward Mountain Road toward the Linney property. The best reason for double access in a situation like this is that the more people have to funnel out at a single point of access, the busier the road is at that point in the road.

Torbert asked is it possible for us to request an expedited look at this by having Fire and Police evaluate the entrance. This will best be determined if they don't have a problem from a safety perspective. A consensus of the Board indicated that if Police and Fire are okay with this on the first level evaluation, then "we" are ok with single road access. Todd Frederick said to let the record show there were six yeses for that proposal (that Police and Fire should evaluate the entrance(s)).

Todd Frederick said it is the Board's consensus that we would not allow connectivity to other properties.

Dave said the response to the final item in Steve Burns's memo would be for the board to grant the waiver for underground utilities.

**Function Tent & Lot Division at Cape Neddick Country Club; 650 Shore Road; Map & Lot 0100-0003: Proposal to establish a function tent and make associated site improvements, and to divide off a house lot along Shore Road in a manner that may not be a subdivision.**

Torbert Macdonald moved to accept Application for hearing.

Ed Brake from Attar Engineering represented the application. Bob Satter, the president of the Cape Neddick Country Club on Shore Road, was present. The tent area is not in the Shoreland zone and there are wetlands in the southern corner. The tent will accommodate 229 seats requiring 79 parking spaces, 3 for handicapped. Stormwater meets Town requirements. Torbert Macdonald moved to open the **Public Hearing**. No one came forward to speak.

**Motion:** Torbert Macdonald moved we waive the requirement for a High Intensity Soil Survey. Dave Woods seconded the motion, which passed 5-0.

**Motion:** Torbert Macdonald moved we waive the requirement for the steep slopes. Dave Woods seconded the motion.

During discussion: there are 50% side slopes coming off the parking lot. A 40% steep slope by the tent is coming into the 18<sup>th</sup> fairway and green. A golf course is all about mixed contours, said Dave Woods.

**Vote:** The motion passed 5-0.

Dave Woods said the port-a-potties would be brought in for individual events. Steve Burns said that in Site Plan Regs 7.9.2, private sewage disposal system says nothing about port-a-potties.

Ed Brake spoke without using a microphone. Lew Stowe said that at the Ogunquit Playhouse and Harvest Fest, people use trucks that have port-a-potties on them. He said he wouldn't have a problem if they were used for 16 events, but not 100 events. Todd Frederick said it wouldn't be possible to differentiate between the people designated to use port-a-potties and the ones using the clubhouse. Dave Woods said it would be difficult to enforce restrictions.

Torbert Macdonald said to allow the applicant to figure out what is needed. He suggested the language, "sewage disposal facilities of a temporary nature adequate to the size of the anticipated event." Why would they do anything that is inadequate to the purposes? The public will enforce it by not showing up.

**Motion:** Torbert Macdonald moved that we waive the requirement for 7.9.2, private sewage disposal system, and substitute temporary sewage disposal systems adequate to service the anticipated events. Tom Prince seconded the motion.

In discussion, Lew Stowe asked if we were restricting the number of events. Tom Prince agreed that is self-enforcing. It is seasonal.

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

The outstanding issue on the application is the setback of the parking from the road. Ed Brake said he doesn't believe the parking lot is a structure. There is a proposed 20-foot buffer and a 20 foot buffer requirement along Shore Road.

In Article 5 there is no setback required for mailboxes, utility poles, or driveways. The traffic aisles count as driveways. They are allowed in the setback area. The parking spaces are held to the setback standard as a structure. It is a structure because it is permanently built into the ground, explained Steve Burns.

**Motion:** Dave Woods moved that we go until 10:45. Torbert Macdonald seconded. It was unanimous.

The applicant asked for a waiver. It is zoning standard and can't be waived, said Steve. It could be appealed, though. Torbert suggested the Planning Board deny the waiver and take it to the board of appeals. The applicant asked if the parking lot can be grass instead of gravel. No it would still be a structure.

There is a 50-foot setback and you're probably going to have to back that off from Shore Road, or you may end up with a denial for that piece of the application. Steve Burns said the Appeals Board would most likely remand it. Steve Burns suggested bringing the applicant back on October 11. They may come back with they changed the parking lot.

### **Other Business**

None

### **Adjourn**

10:45