

**TOWN OF YORK PLANNING BOARD
THURSDAY, JULY 21, 2005, 7:00 PM
YORK PUBLIC LIBRARY**

Chairman Barrie Munro began the workshop meeting at 7:10. Glenn Farrell, Barrie Munro, Richard Smith, Glen MacWilliams, Tom Manzi, and alternate Lee Corbin attended. Michelle Moody was absent. Town Planner Steve Burns represented staff. Patience Horton took minutes. The meeting was televised. The Chairman began the meeting by introducing the board and the staff.

Public Input

Open to the public to address any issue other than issues scheduled for public hearings on the agenda.

The chairman opened and closed Public Input. No one came forward to speak. However, Patty Hymanson, who was balancing between this meeting and a simultaneous meeting across the hall came in after the Public Hearing was closed and asked to speak about a few of the ordinances. Barrie Munro explained that the ordinance discussion was on the agenda and would be coming up later. She would have to wait to speak. She described access to the Planning Board as cumbersome. She said that on another occasion, while watching the meeting on TV, she had seen something she wished to comment on, and got in her car and drove to the meeting. When she got here, public comment had ended, and she was given no choice by the chairman but to write a letter, which she did. She said the letter was never acknowledged. She said she did not have time that evening to sit in the audience and wait for an opportunity to speak.

Steve Burns suggested switching the agenda and putting the first item of business at the end. That would put the public hearing and Patty Hymanson's chance to speak at the beginning. Richard Smith asked how long the meeting was expected to last, and Barrie Munro replied, until 10:30. Lee Corbin said that she would be leaving at 9:00. Barrie Munro asked the board if they wanted to open the public hearing on the ordinances first, and the board was agreeable.

Business

- 1. Planning Board Administrative Matters (*Moved to the end of the meeting*)
Planning Board Administrative Matters. Spend not more than 30 minutes discussing the following two matters.
 - A. Discuss potential amendments to the Board's bylaws to address a board member representing an application to the Board.**
 - B. Discuss procedures for Planning Board site visits to make a final check prior to issuance of occupancy permits.**
 - C. Discuss potential amendment of the Board's bylaws to adopt by reference the Selectmen's Ethics Policy.****

2. Public Hearing—Ordinances. This is the Planning Board’s second public hearing on proposed amendments to Ordinance.

**Proposed Ordinance Amendments
To be considered at the
November 2005 General Referendum
Draft 6: June 30, 2005**

- 1. Zoning Ordinance—Home Occupations**
- 2. Zoning Ordinance—Cluster Subdivisions**
- 3. Zoning Ordinance—Affordable Housing Standard for Cluster Subdivisions**
- 4. Zoning Ordinance—Wetlands protection Incentive for Cluster Subdivisions**
- 5. Zoning Ordinance—Route One Building Design Standards**
- 6. Zoning Ordinance—Increase Buffers for Elderly Congregate Housing**
- 7. Zoning Ordinance—Change Boundaries of the BUS-3 Zone in York Beach**
- 8. Zoning Ordinance—Alter Regulation of Condominium Conversions**
- 9. Zoning Ordinance—Reconsiderations by the Board of Appeals**
- 10. Zoning Ordinance—York River Watershed Overlay District**
- 11. Zoning Ordinance—Utility Pump Stations**
- 12. Zoning Ordinance—Historic Landmark Designation of Grant House**
- 13. Zoning Ordinance—Bus-as-a-Structure Issue**
- 14. Zoning Ordinance—Reduce Permitted Uses in the GEN Zones**
- 15. Zoning Ordinance—Extent of Control of the Shoreland Overlay District**
- 16. Zoning Ordinance—Amend the Shoreland Overlay Sub-district Boundaries**
- 17. Zoning Ordinance—Structure Expansion Limits in the Shoreland Overlay**
- 18. Zoning Ordinance and Floodplain Management Ordinance—Fee Schedules**

The Chairman invited the public to speak. David Tibbetts of the York Conservation Commission said that natural resources are the Conservation Commission’s priority. The Commission is in favor of the changes proposed in Ordinance Amendment 4, Wetlands Protection Incentive for Cluster Subdivisions. As well, the commission is in favor of Item 10, York River Watershed Overlay District, mainly because of the increased protective buffer.

Patty Hymanson spoke about Item 3, Affordable Housing Standard for Cluster Subdivision. In the affordable housing in which her sister lives in New York State, there are problems with heating, insulation, and soundproofing. The construction materials were inexpensive and of low quality, and soon after moving in, her sister was paying costly assessments to rectify hasty construction. Patty Hymanson said that York should impose

adequate standards to prevent that from happening. She also spoke about Item 10, the York River Watershed Overlay District. She lives off Route 91 on High Pine Road, overlooking the marsh. Every spring she sees rivers of water stream into the marsh and on down into the York River. She said she appreciates the wording and the tightening of rules the overlay will produce.

Bob Cutts also spoke about the York River Watershed Overlay District. He focused on the situation where properties that have existing lawns would be able to expand their buildings, and those who have kept buffers around their homes cannot. He said it penalizes people who kept buffers around their homes. It is unfair if they cannot add on. It rewards palatial lawns and not those that are natural. His own property would be penalized against building. Steve Burns said that the rule was set up for houses that do not have the required 100-foot buffer. Barrie Munro said that he would like to talk about the matter during the review portion of the meeting. Bob Cutts went on to talk about the more strict septic design standards that are being proposed in the Watershed District. There is a problem in the design flow, he said. A new system that has to have 24 inches of soil will have a lower flow. He said that the design flow might not have the best basis in science. As well, the costs will be astronomical for the people building the systems.

Leon Moulton spoke about Item 11, Utility Pump Stations. He referred to the Route 1 zone property lines and the lot sizes in that zone. He said that people need a break on utility pumps and setbacks. They should not need to put a pump station on a 2-acre lot.

Charles Stacy came in from watching the meeting on television. He said he watches the meetings regularly and can seldom hear everything that is said. He usually cannot hear Steve Burns at all. Tonight, the music is on, and he thought that the microphones were turned off. Glenn Farrell, who sat at the far right end of the board table, near the TV control room, said that he could hear music coming out of the room. The operator came out and said that he needed a PIN-type code in order to turn the music off. It was a code the Town Manager had. Steve Burns went across the hall to the simultaneous meeting where Acting Town Manager Jenny McCann just happened to be. She came in and turned off the music. The meeting resumed. Steve Burns put the portable microphone at his place to make sure he was heard.

Cliff Estes also came in from watching at home. His frustration, he said, was in his disappointment that there is not more of the public involved. He said that in the past, the Planning Board has taken a greater initiative to send information out to people. He said that the York River Watershed Overlay has to be more carefully explained to the public, as does the Home Occupation Amendment. He suggested making handouts and sending mailings out. Regarding Home Occupation zoning, he suggested to the board that the northern zone near Cape Neddick, and the southern zone, near Kittery, be split up into rural and residential areas. It would protect the residential areas. He thought that residential areas should not necessarily be the place for day care centers, and that clusters should not be allowed in rural zones. He said that the Planning Board speaks about children in a derogatory fashion, as if children's presence makes things difficult. He felt that

the Home Occupation amendment is in conflict with the Comp Plan. He recommended changing the Comp Plan to match the zoning, rather than changing the zoning to meet the Comp Plan. Cliff Estes said that the most important thing he had to say was that the public is not being informed well enough.

Leon Moulton spoke about the Watershed District Overlay. He said that there should be a more sustainable cutting allowance. Steve Burns said that ordinance meets State forestry standards.

Bob Cutts returned to say more about adding onto a house in the York River Watershed Overlay District. He said there should be a means by which people wishing to add onto a property that existed prior to the formation of the overlay district can appeal before a Town board. That way, the rule will not so strictly prohibit them.

Cliff Estes said that the maps compound the inadequate communication from the Planning Board. He said that maps don't explain the zones.

The chairman closed the Public Hearing and asked the board to review the list of ordinance amendments, item by item.

1. Zoning Ordinance—Home Occupations

Barrie Munro acknowledged that the board understands Cliff Estes's concerns about communication. Tom Manzi said that the information strategy has to be reviewed. Barrie Munro agreed that the board has to improve the public's perception. The workshops and the public hearings with the selectmen don't always work at getting the public's understanding.

Barrie Munro asked Steve Burns to run through what is being proposed. Steve Burns went to the map and showed the different class zones in different colors. He described Class 1, in green, the small, central zone that currently allows people with licenses to conduct home occupations, but will change to include more people who don't need licenses, like writers. He showed Classes 2, in red, and 3, in blue. The origin of the class zones is the original zoning map, the boundaries of which York's GIS Manager, Brett Horr, dropped onto the home occupations map. The permissiveness of GEN-1 and the restrictiveness of GEN-3 were discussed.

Glen MacWilliams said that he would like to see the activities in the red areas become more accommodating. He referred to the June 9, 2005, letter from Sandra P. Burnham of 23 Harry St. Steve Burns said that the letter has to do with trades-people who use a property to prepare for off-site work. Lee Corbin read the letter into the record, which described the negative impact Seacoast Roofing and Construction's business near Sandra Burnham's home has on her family and neighborhood. Sometimes there are as many as nine vehicles on the Seacoast Roofing property. Barrie Munro asked that Code Enforcement look into the parking and other standards for that level of residential activity.

Motion Glen MacWilliams moved to add §7.4.2 C.5, allowing extra parking for a brief period of time, to Ordinance Amendment 1. The motion passed, 5-0.

2. Zoning Ordinance—Cluster Subdivisions

Describing the ordinance, Barrie Munro said that the board has limited the cluster size to nine lots. Steve Burns said that the number could be reduced in extenuating circumstances. Referring to comments made by Patty Hymanson during the Public Hearing, Glenn Farrell said that substandard houses are a code enforcement issue, but affordable housing has the same standards that expensive houses have. Glen MacWilliams said that there are standards for affordability and environmental impact. Steve Burns referred to letter from Attorney Peggy McGehee. It recommended that the Code Enforcement Office oversee the closure of publicly accessed open space, when necessary. Steve Burns said that if there is an extended problem, the Planning Board, not Code Enforcement, should be the referee to a decision. The board discussed a second point in her e-mail. She suggested the addition of language concerning use of open space, “that lot owners shall have the right to use any cluster subdivision open space depicted on their subdivision plan.” The board discussed the language, and Lee Corbin thought that getting advice about it from the MMA would be smart. Having the town attorney look at the provision was also suggested.

4. Wetlands Protection Incentive for Cluster Subdivisions

The board referred to the Transfer of Development Rights, the formula for which had changed from 25% to 50% at a recent meeting. The discussion was brief.

5. Route One Building Design Standards

There was no discussion.

6. Increase Buffers for Elderly Congregate Housing

Steve Burns said that the amendment had changed to reflect building heights. There was no discussion.

7. Change Boundaries of the BUS-3 Zone in York Beach

There was no discussion.

8. Alter Regulation of Condominium Conversions

Steve Burns passed out a copy of the legal opinion he had received after inquiring if parking standards would still apply after conversion. He said that the opinion indicated that when converting weekly rentals to a home, the use is changed, affected by seasonal access and density. Every unit has to have at least one parking space.

Motion Glen MacWilliams moved to approve the amendment after striking three lines of language (“the property and each proposed, condominium unit, shall be in full compliance with the parking standards of §15.1.1.2 for the alteration of ownership”) from the proposed ordinance amendment. Glenn Farrell seconded the motion, which passed, 5-0.

9. Reconsiderations by the Board of Appeals

Glenn Farrell said that the time period for reconsidering should be changed from 30 to 45 days from the date of the original vote.

Motion Glen MacWilliams moved to approve Amendment #9, Reconsiderations by the Board of Appeals, as amended for the 45-day period. Tom Manzi seconded the motion, which passed, 5-0.

10. York River Overlay Zone

Steve Burns said that certain types of sludge would be allowed and that the language should be updated. The objection by Bob Cutts has to do with building setbacks on Page 38 of Draft 6 of the Ordinance Amendments being used that evening. It says that grass does not act as a natural buffer. Lawns are not good buffers, according to Wells. Barrie Munro said that the ordinance is not likely to pass because of the theoretical intrusion into the opportunity to expand. Steve Burns replied that it is only for existing lawns. New lawns cannot be added. Glenn Farrell said that at this time, a person could expand with certain exceptions. Barrie Munro said that there are a small percentage of people who wish to expand. He recommended leaving the amended ordinance as it is and then seeing what the Selectmen and public say during future hearings. Steve Burns said that Leon Moulton is concerned about the 10% tree removal in a 10-year period, and he wants to go to the State standard of 40% in a 10-year period.

Richard Smith said that the 100-foot buffer is “beyond the call of duty.” Some tributary areas dry up. Those need to be considered against the tributaries that do not dry up. He asked why the rule has to be so severe.

Steve Burns said that focus is on perennial streams from the USGS map for the Watershed Zone map base. Glen MacWilliams said that with the new ordinance, all the streams are being protected. Forty percent of the land area is encompassed in the zone, but it does not affect 40% of everybody’s land. Steve Burns described Brett Horr’s analysis of the Watershed Overlay District. Of 242 lots requiring pending growth permits, 25% (62 lots) are in the Overlay. Of those 62, 20 are affected by the 100-foot setback. Glen MacWilliams said that the ordinance amendment should go forward with the change proposed to the forest and timber harvest standard. He asked if there was a way to deal with the citizen’s right to appeal, as proposed by Bob Cutts.

The group discussed an outreach strategy. Barrie Munro suggested that the board put a televised, informational presentation together. He suggested taking the first 15 minutes

of the next five or six meeting to intensively deal with the different ordinances. Glenn Farrell said that not many townspeople watch the Planning Board on TV. He suggested asking *Fosters*, *The Weekly*, *York Independent*, and the *Portsmouth Herald* for some free space to put in summarizations about what is going on and including a phone number for contacting the Planning Office. Barrie Munro said that the order in which the intensive information effort should be made is Ordinance 1, Home Occupations; Ordinance 2, Cluster Subdivisions; Ordinances 3 and 4, Affordable Housing Standard for Cluster Subdivisions and Wetlands Protection Incentive for Cluster Subdivisions, together; and finally Ordinance 10, York River Watershed Overlay District.

Barrie Munro responded to Bob Cutts's comment that the Planning Board implies that children are bad. He said the board never meant for there to be a derogatory comment like that.

11. Utility Pump Stations

Barrie Munro said that minimum lot size would be good for requiring pump stations, as Leon Moulton had suggested. Barrie Munro took an informal consensus, and the board replied positively toward making the change in the ordinance.

12. Historic Landmark Designation of Grant house.

Steve Burns said that he would write up an explanation about Grant House.

13. Bus-as-a-Structure

Steve Burns said that this ordinance affects situations where neighbors have too many cars or trailers on their property. The ordinance is not difficult. The board will probably see more of this kind of situation.

14. Reduce Permitted Uses in the GEN Zones.

There was no board discussing about this.

15. Extent of Control of the Shoreland Overlay District.

Barrie Munro said that absent Michelle Moody had requested at the last meeting, July 14, 2005, to add septic standards back into the ordinance. The Planning Board was in favor of putting it forward as proposed by the Conservation Commission. Steve Burns said the he has the language for doing so, and that what is proposed is the stricter of the alternatives.

Motion Richard Smith moved not to consider the change. Glenn Farrell seconded the motion for the sake of discussion. After short discussion, Richard Smith withdrew his motion.

Motion Glenn Farrell moved to send the amended ordinance, found on Page 44 of Draft 6 of the Proposed Ordinance Amendments, forward to the Selectmen as originally approved, without the Conservation Commission recommendation. The Motion passed, 4-1, with Glen MacWilliams opposed.

16. Amend the Shoreland Overlay Sub-district Boundaries

There was no discussion.

17. Structure Expansion Limits in the Shoreland Overlay

Steve Burns said that the only public involvement has been one person's following the amendment very well and even coming into his office to spend one-half hour talking about it, but there was nothing further.

18. Fee Schedules

Barrie Munro said that this is being initiated so that the Selectmen can establish fees.

That completed Planning Board discussion about the 18 Ordinance Amendments.

Barrie Munro wanted to talk more about Item 10, York River Watershed Overlay District. He said that Bob Cutts had voiced his objection to the bigger septic systems by saying that it takes longer for such a system to fail, which means that the system has been failing for a long time. Bob Cutts was asking for a change according to the size, and Barrie Munro said that the board should deal with that at some point.

There was a five-minute minute break. When they returned, the board went back to the first agenda item, which had been postponed.

Planning Board Administrative Matters

Barrie Munro explained that at the July 14, 2005, Planning Board meeting, there had been a motion to adopt the Town of York's Selectmen's Ethics Policy as part of as part of the Planning Board bylaws. The motion was not seconded. Barrie Munro then appointed Tom Manzi and Glen MacWilliams to come up with alternative language. Glen MacWilliams explained the language he was presenting. It provides, in the event a recusal is necessary due to a board member's conflict of interest, that the person will be required to leave the room during the hearing. Also, if there were a conflict of interest, more notice would be required from the board member, as specified in Paragraph 12 of the Selectmen's Code of Ethics Policy. Paragraph 18 emphasizes that the board will intervene in accordance with *Robert's Rules of Order*.

Tom Manzi said he was in agreement with Glen MacWilliams's comments. He alluded to the U.S. Supreme Court Judges' practice of leaving the courtroom when they recuse themselves and do not sit in the audience and watch.

Richard Smith replied that there is no sense in leaving the room. "We are all adults." Glenn Farrell said that is was a good idea. It says that the members shall sign a statement. He thought the changes were good.

Motion Glen MacWilliams moved to adopt the Selectmen's Policy Code of Ethics as amended. Tom Manzi seconded the motion.

In discussion, Steve Burns suggested that they become known as the Planning Board Code of Ethics. Glen MacWilliams suggested keeping the Selectman name on them when inserting them into the by-laws, because the Planning Board is using the Board of Selectmen's Code of Ethics.

Vote The motion passed, 5-0.

Glen MacWilliams said he wanted to have an Executive Session over something that happened in the past. He asked that the board deal with it. Chairman Barrie Munro said that he wanted to deal with it at the next meeting because of time constraints.

Barrie Munro read the July 19, 2005 letter to the York Planning Board from Glenn Farrell. It summarized the review of and his involvement with the York Oil Project and stated that Glenn Farrell believed that his "conduct during the review was in full compliance with the By-laws." When he finished reading the letter, the following motion was made.

Motion Glen MacWilliams moved that, in accordance with the provisions of *Robert's Rules of Order*, the following motion is made to request the Chair appoint a subcommittee of the Planning Board to investigate alleged misconduct by Glenn Farrell in connection with the Application for Permit for York Oil. In addition, the investigating subcommittee shall report their findings to the Planning Board only, and only in Executive Session.

There was no second to the motion.

Barrie Munro did appoint Richard Smith and Tom Manzi to form a subcommittee to investigate the alleged misconduct by Glenn Farrell. He said that by limiting the committee to two people, their meetings would not have to be posted. Richard Smith said that he did not know of any board that uses Executive Sessions. Glen MacWilliams said that he has given the board memos about it. Executive Sessions are allowed in the Charter. It is a matter of board discipline. He proposes an executive session so that it will not be done in the public eye.

Richard Smith said that he does not wish to judge another board member.

Glenn Farrell asked that if there are allegations of misconduct, who made them? He said he wants the allegations handled in the open. As he had during the July 14, 2005, Planning Board meeting, Glenn Farrell asked that paperwork, like the Memo to the Planning Board from Glen MacWilliams dated July 18, 2005, and passed out only minutes before this item began being discussed, be handed out at the beginning on the meeting, not the end.

Barrie Munro said that if there is a finding against Glenn Farrell, he is not sure of the penalty. The full board would have to be present to discuss the matter. The alternates will have to be present to vote in place of Glen MacWilliams and Glenn Farrell. He said he thought that the matter should be transparent, and the public should have full knowledge of what is going on. He said he would make it an early agenda item.

In other business, Barrie Munro pointed out that Minutes from Sept 11, 2003, the Meadowbrook Plaza LLC application, had been handed out. They pertained to the Seacoast Maine Donuts application, i.e. Dunkin Donuts. The Board of Appeals recently remanded the application back to the Planning Board. Steve Burns said that it is important for the Planning Board to confirm that it did not mess up the process in any way.

Motion Glen MacWilliams moved to request that the Board of Appeals rehear the Seacoast Maine Donuts application. The vote passed 4-1, with Richard Smith opposed.

In other business, Steve Burns said that continued discussion about work priorities for the coming year Work Priorities for 2005/2006 would take place at an upcoming meeting.

The meeting adjourned at 10:30.