

**TOWN OF YORK PLANNING BOARD
THURSDAY, MARCH 28, 2002 - 7:00 PM
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Chairman Al Bibb began the workshop meeting at 7:05 P.M. Planning Board members Dave Marshall, Torbert Macdonald (slightly late, having been misinformed about meeting location), Barrie Munro, Glenn Farrell, and alternate Dan Remick attended. Town Planner Steve Burns represented the staff. Patience Horton was the recording secretary. The meeting was televised.

MINUTES

The February 28, 2002 Minutes were reviewed. Dan Remick motioned to accept. Glenn Farrell seconded the motion. In discussion, as a friendly amendment, Dave Marshall requested the following language be stricken from the final paragraph: "and in Dave Marshall's absence". The motion to accept the minutes as corrected was accepted, 3-0, with Mr. Bibb abstaining due to absence from that meeting.

The March 14, 2002 Minutes were reviewed. Dan Remick requested that his name be added to the roster of attendees. Barrie Munro asked that the language concerning his "concurrence," mentioned on the last page, in the third paragraph from the bottom, be stricken, as he had not concurred. Mr. Munro motioned to accept the minutes as corrected, which Mr. Marshall seconded. The vote passed, 4-0, with Mr. Farrell abstaining from the vote, due to absence from the meeting.

APPLICATIONS

**HICKORY MEADOWS SUBDIVISION, MAP 90/LOTS 14F AND 17.
BOARD TO VOTE ON FINAL APPLICATION FOR SEVEN LOT SUBDIVISION**

Mr. Bibb asked Glenn Farrell if he was familiar with the application, for he had missed the prior hearing. Mr. Farrell answered that he had read everything and felt informed.

Mr. Burns introduced the Denial Findings of Fact, which he said included all the possible reasons he could justify. The Town Engineer's new drainage analysis included a change in volume of drainage and a change in the nature of the flow. The application needed construction outside of the right-of-way, requiring digging that would impact neighbors. The plan also contained inconsistencies with different information from different sources.

Mr. Munro said that the Town Engineer had previously said that the drainage situation was okay. Drainage was not a central issue, but encroachment was. He confirmed that the February 22, 2002 plan was the official plan being used. There had been disagreement between engineers (that of the applicant and that of the abutters), and so the Planning Board had determined that the Town Engineer would be the arbitrator, which led to confusion (Torbert Macdonald arrived at this point). Glenn Farrell said that it was apparent that the two engineers had different figures for certain heights. Such plan discrepancies was one reason to turn the application down, along with the drainage problem and construction outside of the right-of-way.

Torbert Macdonald handed out a document, which begins "Under guidance of 30A MRSA . . ." It is attached to these minutes as "Exhibit A." With it, he stated, he had structured a denial suitable for the appeals process. He then went through the document, explaining site plan regulations and listing reasons for denial. His points included Article 8.3.2.5, concerning drainage-ways being protected from erosion, as well as reference to the Comprehensive Plan concerning "best management practices regarding soil erosion and sedimentation control."

Mr. Munro disagreed with Mr. Macdonald, stating that, with the exception of the encroachment issue, the due authorities had approved of everything in the application. There would be no construction of any sort that has any bearing on the quality of flow into the York River, he said. Water cascades over the road (mud or gravel, eventually impervious) and then will now move north and down the swale, which appears to have significant potential to slow the velocity and purge the soil. Clay soil sheds its skin, and if grass were to be grown, there might have less erosion potential.

Torbert Macdonald said that there had been a plan for caring for the water against impermeable surfaces. Mr. Burns said that the applicant proposed to split the drainage coming down that property to divert the flow. It is in the plan. Mr. Munro added that there is a rocky creek bed for 100 yards. Two engineers from Wright Pierce say that it satisfies the Town's requirements, a point which he said he could not refute.

Torbert Macdonald asked that his dissent to be entered into the record.

Mr. Bibb motioned to deny the application, based on three matters: the encroachment issue raised by Steve Burns (Article 6.3.10); the drainage impact, which, though Town Engineers say drainage is decreased, still does not meet Article 8.3.2.5, as described in "Exhibit A"; and thirdly, due to lack of compliance with Comprehensive Plan Goal 5.2, also outlined in "Exhibit A." Mr. Marshall seconded the motion.

In discussion, Mr. Munro said that Article 8.3.2.5 should not be part of denial. He also said that the application hadn't been proven to be inconsistent with the Comp Plan.

Steve Burns said that the drainage volume, construction outside of right-of-way and inconsistencies in general are good reasons for denial, however, the

Town Engineer had said to take the drainage piece out of it. As for Article 8.3.2.5 and the erosion that is downstream, there already is erosion downstream. This is not going to make it worse, the Town Engineer told him. "Take 8.3.2.5 out," he recommended. Steve Burns said he did not "buy" the idea about the Comp Plan. The Town engineer reviewed the erosion and sedimentation control and he doesn't think it will have an impact. Neither did Steve Burns believe that it would have an unreasonable impact. However, the technical issue of the construction outside of the right-of-way is an issue. He described the proposed construction and explained the issues around it as "tough," issues that have not been addressed in sixteen months, except once, last summer

Mr. Macdonald said that the best control for erosion and sediment was not part of the plan. A hydrology study had been planned and passed, but was never presented. The land is "terrible." The soil conservation handbook tells us that the soil is terrible, he said. The loam has been stripped. Abutters say that the land is saturated soil nine months of the year. If the land has no capacity to absorb the water, how will it enter the river without harming the river?

Mr. Munro said that the CEO had approved the septic system. He personally had walked the property that day and didn't need boots.

Mr. Burns said that the only thing he wanted to point out was in the first paragraph of the Findings. Most of the requirements are satisfied or are close to being satisfied with plan changes. The fix that needs to be made has to do with the right-of-way. He called that the "show stopper." Mr. Bibb asked Mr. Burns if the Board gives a denial on the three issues, could the applicant then resubmit a proposal. Mr. Burns answered that when they get a denial, they can't come back and ask for the same thing. Mr. Munro asked that if the encroachment "goes away," can the applicant come back before the board. Mr. Burns answered yes, if that is the basis of the denial.

Mr. Bibb re-stated the motion to deny, based on Article 6.3.10 (right-of -way), Article 8.3.2.5 (environmental impact), and Town Goal 5.2 (best practices regarding soil). The motion was passed, 3-2, with Mr. Macdonald, Mr. Bibb, and Mr. Marshall voting for, and Mr. Farrell and Mr. Munro voting against the motion. Mr. Macdonald then asked that his document become permanently attached to this set of minutes. He then left the meeting and did not attend the following workshop.

WORKSHOP

HOW TO REGULATE WIRELESS COMMUNICATIONS. DISCUSSION WITH THE BOARD OF SELECTMEN AND TOWER TASK FORCE ABOUT CHANGING YORK'S WIRELESS REGULATIONS.

Town Selectman and Tower Task Force member Michelle Moody, and Town Manager Mark Green joined the discussion, as did Stan Moody, Chairman of the Conservation Commission.

Steve Burns introduced the matter. About one-and-a-half years ago, the Town denied a cell tower. The Tower Task Force committee was created, and it provided a document that grew from seven to thirty pages of complicated codes that are administratively difficult to manage. Since then, Michelle Moody and Stan Moody have come up with an alternative concept. A key question is who will make policy decisions.

Michelle Moody said that the January 14, 2002 Draft No. 21 was supposed to have a public hearing, but that it did not follow through with the Selectmen. A decision needs to be made about going forward with which documents.

Mr. Bibb noted that there had been a misunderstanding about the postponement of that evening's review, so the Tower Task Force was not present. Resolution of how it will be handled remained an issue. Mr. Munro said that setback dates are in November of this year, so the document will need to be handed off to Selectmen by Mid-July.

Mark Green said he had discussed the matter with the Selectmen, Mr. Rappier, Mitchell, Mr. Bibb, and others. He felt that comments should go from the Selectmen to the Town Attorney, whose draft should then return to the Tower Task Force, the Planning Board, and the Selectmen for the next point of getting together. In that process, the attorney would have direction from the existing ordinance, Michelle Moody's work, and the Task Force's work.

Mr. Bibb asked if the expert at UNH, who had been mentioned at an earlier meeting, had been contacted. Michelle said that that had not been done. It was agreed that it was not necessary to do so. She asked which group would hold public hearings around cell tower regulation. Mr. Marshall said that it should be the Planning Board. Mr. Munro said that he did not want to see the Task Force Committee excluded from the process.

Mark Green said that there was no consensus on any single document, with Michelle Moody and the Task Force each having their own draft. Mr. Munro suggested creating an *ad hoc* commission comprised of some personnel from the Planning Board. He reminded them that they had better get moving right away. Glenn Farrell said that the Town Attorney is not an expert on towers, and that perhaps someone used to writing ordinances would be the best to write the document before sending it to the attorney. Mark Green thought that the regulations of other towns with good tower ordinances might be checked, specifically Falmouth and Yarmouth.

Steve Burns said to put the issue in perspective. The committee compiled the best ordinance they could. But the day-to-day operation of the CEO or the Planning Board was not given any consideration, so they didn't have the day-to-day reality. Michelle Moody and Stan Moody have picked out policy issues and brought them into workable, administrative framework. That is the best starting point.

Dave Marshall suggested going with Michelle Moody's document and having a public hearing about it. Steve Burns said that you could ask people what is important to them. Now you see towers everywhere. Some need to be at the

canopy level with less of a visual impact. That is a policy change. You need to have a forum on such a policy change. Michelle Moody said that the No. 1 priority in "her" ordinance is to disguise towers. They can be hidden in church towers, and flagpoles, and different places where they cannot be seen.

Mark Green said that he thought a document with a consensus, as a starting point, is needed so that the Tower Committee could be satisfied with the project. Steve Burns suggested that Barrie Munro and Michelle Moody get together and figure out what to present at the April 18 hearing. Everyone seemed to agree to this. Mr. Bibb said that the Tower Task Force wanted to meet with the Planning Board to discuss these things. Mr. Marshall suggested holding the Task Force discussion with the Planning Board after the hearing. Mr. Bibb said that a few slides would be needed to make the controversial issues obvious. Several possibilities for the date for the hearing/meeting in April was discussed but not decided upon.

OTHER BUSINESS

Steve Burns announced that he had hired another person to work in the Planning Department. Among other tasks, that person will do the prep work on applications. He said that if six applications are processed at the next Shoreland Committee meeting, there would only be twenty-five left on the list, applications which had only been waiting since about November, a good achievement.

Mr. Marshall motioned to adjourn the meeting, which Mr. Farrell seconded. The time was 8:45.

Respectfully submitted,

/S/

Patience G. Horton