

**TOWN OF YORK PLANNING BOARD
THURSDAY, JUNE 22, 2006, 7:00 PM
YORK PUBLIC LIBRARY**

Chairman Barrie Munro began the meeting at 7:05 by introducing the board and the staff. Barrie Munro, Vice Chairman Glen MacWilliams, Richard Smith, and alternate Lee Corbin were present. Glenn Farrell and Tom Manzi were out. The Chairman asked Lee Corbin voted in Tom Manzi's place. Town Planner Steve Burns represented staff. Patience Horton took minutes. The meeting was televised. At the end of the meeting, my-lars for Irving oil and York Hospital were signed.

Public Input

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

Mike Estes said he wished to build a temporary 6' X 11' shed for his tenant, Roast and Crumb Coffee Shop at 519 Route 1. The shed would be used until the addition he is preparing to build is complete. The shed will be used to house two refrigeration units. Submission of the application and the subsequent building of the addition might take a full year. Glen MacWilliams asked about lighting. Mike Estes replied that there would be motion-detected lighting. Barrie Munro said that an as-built plan would have to be submitted to Planning, as soon as the shed is finished. Barrie Munro asked if all were in favor, and all four board members raised their hands in agreement (the vote was not the result of a motion).

Mike Rogers from Kittery Water District asked to speak about proposed amendments to the Comp Plan. Chairman Barrie Munro asked him to wait for that agenda item to come up.

Barrie Munro read a request from Anderson Livingston requesting a **field change** to the site plan at **Bayberry Ridge** proposing a substitution of corrugated plastic pipe for two culverts instead of previously approved reinforced concrete pipes. Steve Burns added that Town Engineer John Treat had endorsed the change.

Motion Glen MacWilliams moved to accept the Bayberry Ridge field change. Richard Smith seconded the motion, which passed, 4-0.

The Chairman reviewed the agenda and began the public hearings.

Public Hearings

A public hearing will be held on each of the following draft Comprehensive Plan amendments:

1. **Growth Policy Amendments**
2. **Policy Amendments regarding Public Water and Public Sewer**
3. **General Policy Amendments**

4. **Update Accomplishments**
5. **Amendments to Remove Excess Specifics**

These Comp Plan hearings were taken out of order. Barrie Munro began with Item 2.

2. **Policy Amendments regarding Public Water and Public Sewer**

Mike Rogers of the **Kittery Water District** said that he supports the area of prohibited expansion Steve Burns had shown on the Public Water and Public Sewer map. Prohibited expansion is a way to protect York's water sources. He listed the areas that are planned to switch over from Kittery to the York service territory.

Don Newman of the York Water District said that as York takes over service territory from Kittery, more customers will be added to the York District, but the protection of the watershed remains very important. The expansion to Highland farms will be costly. Water to a proposed skating rink and swimming pool complex on the other side of I-95 has to be considered, as does the building of a pump station to extend service to current Kennebunk customers. Expansion of water could be considered for the Route 1 North corridor, and water might go to Pine Hill and Logging Road, as well.

Barrie Munro read **KK&W Water District Superintendent Normand Labbe's** June 22, 2006, letter. It indicated that, "The Water District sincerely hopes that any zoning amendments resulting from this proposed modification to York's Comprehensive Plan are clearly written in such a way to eliminate conflict between the Town's wishes and the responsibilities of chartered water utilities."

Tim Haskell, Superintendent of the York Sewer District, said he supports the service area and changes to it, however, the area might be slightly too narrow. The northerly side of the Cape Neddick River is not included, and it should be. Bog Road might be included later. He had recently talked to the **Ogunquit Sewer District** people. The service they provide to the Pine Hill area is in response to the large number of failed sewer systems there. Otherwise, Ogunquit Sewer District has no interest in going into York. He said he agreed with the recommended prohibited areas. Steve Burns added that Ogunquit does not want to facilitate new development, but would fix failed systems because they are concerned about systems near Perkins Cove.

Peter O'Connor called the plan an example of spot zoning.

Rick Boardman said he endorses the sewer priority zone. Perhaps some boundaries should be "tweaked," but the overall zone should be contiguous.

Helen Horn, a trustee of the **Ogunquit Sewer District**, said that York should be careful to protect the Josias River watershed. The river flows into Perkin's Cove, where the lobster industry has to have clean water. Sewer extension encourages development. The

pressure seems relentless to develop what is left of York's 56 square miles. She asked that the Planning Board honor the Comprehensive Plan.

Cliff Estes was concerned about communication and public involvement. He asked about the availability of this evening's information. Steve Burns replied that the Town Clerk's office had had the information for a month, and that it was also available on the Internet. Cliff Estes complained about the use of "cross outs" as being confusing. He asked about the Zone 6 sewer extension controversy and continued that he recommended that the growth area be kept between the two rivers.

1. Growth Policy Amendments

Steve Burns described this Comprehensive Plan amendment, pointing out the growth area on the map again. Growth is inferred in the Comp Plan, he said, and should be laid out specifically. There are many types of zoning districts in the growth area, including the Village, transition zones, and the Route 1 corridor. There is a focus on utilities in the growth zone.

Rick Boardman said that the fresh water part of the Cape Neddick River is a large unfragmented piece of land, and should not be in the growth zone.

3. General Policy Amendments

Steve Burns said that this Comprehensive Plan amendment eliminates use of specific years as priority guidelines and also eliminates recommendations that are stricter than State law. One aspect of the amendment allows property owners to capture the economic value of wetland property. The method of updating the Comp Plan by adding chapters and text on a yearly basis is included in the amendment, as are sections about mobile homes, conservation of water district lands, the fire protection policy, and the proposed adoption of a new policy map.

Cliff Estes said that a town-wide committee should make Comp Plan changes of this magnitude.

Peter O'Connor asked about Steve Burns's reference to the transfer of development rights. He asked if development rights should be transferred outside of the growth area. Development rights should be limited to the growth area, because there is nothing that encourages people to build in the growth area.

Bion Pike of Clay Hill Road asked the Board to consider an amendment about covenants and deed restrictions prohibiting covenants from being more restrictive than those of the Town of York. He presented the board with a petition with 100 signatures and accompanying memo, which went to Chairman Barrie Munro. He said that for lifestyle reasons, people want to prevent new covenants west of the Turnpike. He added that stewardship of land is a right that should be protected.

Rick Knight said he echoes what Bion Pike said about covenants, adding that the Planning Board has had people put certain restrictions into their deeds from time to time. "Buyer beware," he said.

4. Update Accomplishments

Steve Burns reviewed Comprehensive Plan tasks that have been completed over the last few years. There are new cluster standards. The Selectmen have implemented legislation for capital improvement districts. The Planning Board has been instrumental in updating building codes and has addressed the expansion of nonconforming buildings. Home occupations has been updated.

5. Amendments to Remove Excess Specifics

Steve Burns said that the fact that the zoning ordinance does not match the Comp Plan is a big legal issue. In 1999, the two had to match within two years. It is more than two years later, and they do not match, because the voters shot it down. Referring to Cliff Estes comments about all the strikeouts, Steve Burns said that there have to be a lot of strikeouts to make the Comp Plan a legally strong document.

Cliff Estes said that the amount of detail being removed is not acceptable, and the public would agree. It cannot be changed with the stroke of a pen, after so much time was spent writing the Comp Plan in the first place. He said that some of what has been taken out is the meat of the Comp Plan and should be put back in, or the ordinances will be weakened.

The portion of public hearing about the Comp Plan amendments was finished.

A public hearing will be held on each of the following draft ordinance amendments:

- 1. Zoning Ordinance--Historic Landmark Designation of Trinity Church**
- 2. Zoning Ordinance--Landmark Designation for Historic Building Conversions**
- 3. Zoning Ordinance--Shoreland Setback Variances**
- 4. Zoning Ordinance--Board of Design Review**
- 5. Zoning Ordinance--Contiguous Non-conforming Lots**
- 6. Zoning Ordinance--Enlargement of Non-conforming Structures**
- 7. Zoning Ordinance--Non-conforming Design**
- 8. Zoning Ordinance--Non-conforming Residential Density**
- 9. Zoning Ordinance--Expansion of Non-conforming Use**
- 10. Zoning Ordinance--Bed & Breakfast Standards**
- 11. Zoning Ordinance--Campground Regulations**
- 12. Zoning Ordinance--Front, Side, and Rear Lot Lines**
- 13. Zoning Ordinance--Stream Protection Zone Boundaries**

14. **Zoning Ordinance--Ordinance Clean Up**
15. **Zoning Ordinance--Site Plan Review and Route One Use Permits**
16. **Zoning Ordinance--Large-Scale Retail in York Harbor**
17. **Zoning Ordinance--Propane and Oil Tank Anchoring**
18. **Zoning Ordinance--Residential Growth Ordinance, and Supplemental Sub-surface Wastewater Disposal Rules—Workforce Housing**

The Chairman opened the public hearing.

Rick Boardman asked if workforce housing was based on income and asked if the priority is for people who work for the Town, the schools, and the hospital. The workforce preference was discussed. Glen MacWilliams said that the proposal would allow multi-family housing in all the residential zones, which is not true today.

Peter O'Connor asked if affordable housing would change the growth cap to exempt workforce housing. Steve Burns said that the growth ordinance does not have to be amended, because there is an exception for affordable housing for low to moderate income.

Cliff Estes added that details and strength were being taken out of the ordinances. He asked if there are laws about new houses that block views and sunlight. He said the workforce housing items were incomplete. He brought up financial qualification of up to \$74,600 for a family of four and questioned whether the workforce housing section was consistent with the present growth ordinance. He commented that the language is too open-ended to be presented to the voters as written.

Patricia Martine, director of the York Housing Authority said that citizens have volunteered time for the York Housing Authority for 28 years. Thirty-two units at Yorkshire Commons were built first, and then, in 2002, Phase 1 of Village Woods was completed with 36 units. It did not cost the Town of York a dime. Forty units were added in Phase 2 in 2005, and in 2006, 28 more. The housing authority will present workforce housing before the voters in November, she said.

Steve Burns reviewed the timetable for the workforce housing public hearings. This current meeting is the second Planning Board hearing on it. The Selectmen will hold hearings on August 21 and September 18. The Town Clerk has to have the warrant by September 23.

Jud Knox, a board member of the York Housing Authority, said that the Housing Authority was requested to look at the issue of workforce housing some time ago. Workforce housing is primarily for people working in the community who need affordable housing. At York Hospital, where he is the director, it is difficult to recruit and retain qualified people who can afford to live in York.

And finally, **Dave Bridges, Chief of the York Beach Fire Department**, said that during the May flood, there were incidents with propane tanks floating around in York Beach that could have been catastrophic. That included the tanks for Inn on the Blues. There has been no ordinance requiring propane tanks to be anchored, he said. As well, there were fuel tanks that tipped over, leaking #2 oil. He said he is satisfied with the ordinance amendment addressing this problem.

With no one else to speak, the **Chairman closed the Public Hearing**. There was a short recess.

Business

1. Joint Meeting with Board of Selectmen

A. Discuss draft ordinance amendments and input received during the public hearing. Decide jointly what to post for the next public hearing, tentatively scheduled for the Selectmen's meeting on Monday, August 21.

Chairman Barrie Munro then conducted a joint meeting of the Planning Board and the Board of Selectmen. Tables where the Selectmen sat were pulled up facing the Planning Board. At the Selectmen table were Chairman Dave Marshall, Vice Chairman Dwight Bardwell, Len Dorrian, Torbert Macdonald, and Mike Estes. Town Manager Rob Yandow was also there.

The discussion began with **Item 18--Residential Growth Ordinance, and Supplemental Subsurface Wastewater Disposal Rules—Workforce Housing**. Patricia Martine and Jud Knox participated. Torbert Macdonald began with Peter O'Connor's comment that the increased density and the transfer of development rights and workforce housing should be limited to the growth area. Mike Estes said that the housing should be on water and sewer. Len Dorrian asked about prioritizing candidates for the housing, asking about the circumstance where a York person might work elsewhere, like Portsmouth. Jud Knox replied that under the current draft, people in that situation would be in the second preference category, the first being for people who live and work in the town. Patricia Martine said that people would have to currently be a resident or currently employed in York to qualify for workforce housing.

Financial qualifiers were discussed. Patricia Martine said that calculation by a third party verifying assets will be part of the process. Having too many assets can disqualify a person, based on income from the assets. Discrimination was discussed. Dave Marshall said discrimination is illegal in housing laws. Patricia Martine said that it is legal to discriminate with housing based on need. Multi-family units were discussed. Torbert Macdonald said that with multi-family housing, it is possible to get nine or ten units to an acre, whereas with single-family homes, it would be only four.

Fair market value resale of the units was then discussed. Lee Corbin asked whether a unit being sold would go at fair market value or would stay within the housing stock. Jud

Knox explained how a unit would stay at affordable value, if nothing works when trying to sell it. The Housing Authority can buy it. Lee Corbin said that a unit could go up for grabs, if about to go into foreclosure. Barrie Munro said that he is concerned about the Housing Authority losing control of the property. Dave Marshall said he was concerned about the town wide density change. Workforce housing allows significant increase in density. Glen MacWilliams said he is concerned about the affordability. The Comp Plan indicates that the average income is \$28,000, but that the qualifying income for workforce is up to \$74,000.

Richard Smith read a memo from absent Glenn Farrell into the record. Glenn Farrell's concern was that workforce housing covers a larger definition of needy people. Mike Estes said that there has to be a better definition of workforce housing determining who really qualifies. He stressed that the York Housing Authority should buy back available property and not allow it to go on the open market. Torbert Macdonald agreed that units should not go to the open market, but be returned to the Housing Authority. He was also mentioned landscaping and buffers. Len Dorrian asked about the taxes on the units. Would they be based on market value? Steve Burns said that the assessor would have to figure that out. Jud Knox said that the covenants are strict and the selling price is capped. Steve Burns recommended a public forum before the next public hearing on the matter, and Barrie Munro suggest the fourth Thursday in July for that hearing.

After discussing Workforce Housing, the two boards proceeded to go over the other draft ordinance amendments one-by-one.

1. **Zoning Ordinance--Historic Landmark Designation of Trinity Church** There were not comments. Mike Estes asked if Trinity was planning to add on, and Steve Burns explained how they could after the historic designation is made.
2. **Zoning Ordinance--Landmark Designation for Historic Building Conversions** There were no comments about this amendment
3. **Zoning Ordinance--Shoreland Setback Variances** Torbert Macdonald asked how the ordinance amendment differs from the mandating of setbacks from the State. Steve Burns said that the ordinance has to do with variances, that he was waiting to hear from the State, but had not yet heard from them.
4. **Zoning Ordinance--Board of Design Review** Glen MacWilliams explained the need to identify standards in the Beach, and that he was waiting to hear from people there, as well as the York Harbor Review Board about negative and positive feedback. Torbert Macdonald questioned if design matters were being taken into account, or if they were actually zoning matters. Steve Burns recommending taking 18.9.4 out of the ordinance, allowing a possible misuse of authority.
5. **Zoning Ordinance--Contiguous Non-conforming Lots** The two boards discussed improper notification to land owners and merged and lost lots. Torbert

Macdonald said that lost lots should be monetized and the original families should have the money. Steve Burns replied that the purpose of the amendment is not to solve equity problems.

6. **Zoning Ordinance--Enlargement of Non-conforming Structures.** Steve Burns explained that the horizontal expansion in non-conforming structures will be prohibited, and only vertical expansion will be allowed. Permitting is taken away from the Code Office, and goes to the Board of Appeals. The nonconforming structure includes just the piece in the setback. The conforming portion can be expanded, as usual. Just the part in the setback is reclassified. Torbert Macdonald disagreed about the involvement of the Board of Appeals, saying the process should be part of Planning. Steve Burns replied that he does not have time to prepare those applications. Peter O'Connor, a member of the Board of Appeals, spoke from the podium, saying that Appeals wants to have criteria that will guide the board's decision.
7. **Zoning Ordinance--Non-conforming Design.** Steve Burns defined non-conforming design as "other things that are non-conforming," like parking spaces that are too few in number or not big enough, or site distances created long ago in consideration of horse and buggy use, instead of cars. Glen MacWilliams said that Applicants have to propose where the improvements will go. Torbert Macdonald said the intent is good, but he questioned how an applicant would make the changes without doing worse.
8. **Zoning Ordinance--Non-conforming Residential Density.** Steve Burns asked the Chairman to remove the item from the amendments.
9. **Zoning Ordinance--Expansion of Non-conforming Use.** Steve Burns said that within the framework of the ordinance, it is possible to satisfy the standards and expand. The amendment is intended to help people's businesses stay vital without aggravating the nonconformity. Lee Corbin said that it is important to keep in mind that Maine wants to encourage business.
10. **Zoning Ordinance--Bed & Breakfast Standards.** Steve Burns said that a fire chief had told him that fire detectors were required in all B&B rooms. B&Bs should be licensed. Torbert Macdonald spoke of the importance of enforcing this.
11. **Zoning Ordinance--Campground Regulations.** There was no discussion about this.
12. **Zoning Ordinance--Front, Side, and Rear Lot Lines** Lee Corbin pointed to a sentence that should be struck. It indicated that where there is no right of access, there is no frontage. Torbert MacDonald suggested replacing the word "street" with "public or private right of way."

Because of the late hour, Chairman Barrie Munro recommended ending the meeting and continuing it the following Thursday, June 29, as a work session. At that time, the balance of the zoning ordinances can be discussed, he said.

In other business, Barrie Munro asked the Planning Board to make a motion regarding recent documents received from the **Highland Farms** attorney.

Motion Glen MacWilliams moved to forward the documents received from the Highland Farms attorney to the Town Attorney. Richard Smith seconded the motion, which passed, 4-0.

The meeting ended. The time was 11:00.