

**TOWN OF YORK PLANNING BOARD  
THURSDAY, JANUARY 22, 2004, 7:00 P.M.  
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Chairman Glenn Farrell started the meeting at 7:00. Barrie Munro, Dave Marshall, Glen MacWilliams, and alternates Tom Manzi, who voted in place of absent Dan Remick, and Richard Smith attended. Town Planner Steve Burns represented the Planning Office. Patience Horton took Minutes. The meeting was televised. There were 2 motions made during the meeting.

**Public Input**

With regard to South Berwick's Bell Marsh Road Subdivision, Torbert MacDonald read from the Maine Environmental and Land Use Desk Book that when a portion of a subdivision crosses town boundaries, all planning meetings must be held jointly, unless there is written agreement that the representatives can waive the requirement of attending the meetings. No opinion from the Town Attorney was necessary in the matter.

Michelle Moody, Chairman of the Board of Selectmen, expressed thanks to Central Maine Power (CMP) for meeting with several Town representatives and resolving the Spur Road issue.

Laurie Downs commented on a Letter to the Editor by Torbert MacDonald describing a former DEP decision that did not make sense. She said that in this case, the DEP had correctly turned down the Spur Road diagonal through wetland, because there was an upland alternative.

Torbert MacDonald further explained the point he had made in the paper.

**Application**

**Central Maine Power Company—Amendment. Request by CMP to design transmission line connection at Spur Road/Route One in the road rights-of-way. This is requested in case DEP does not permit the transmission line to run over wetlands in the Town's preferred cross-country alignment. Public hearing and decision on alternative alignment.**

Mary Smith of CMP stated that though they had agreed to the alternate diagonal route for the transmission lines, it was not permitted by the DEP. CMP addressed the fallback route, which Landscape Architect Terry Wan described by showing elevations of the current building and trees at Stonewall Kitchen before (40 ft. poles) and after the 52 ft. poles are in place, as well as how the same route will look after the planned expansion of the warehouse is complete. At that time, white pines will be added to what is left of the existing buffer.

**Public Hearing** No one came forward to speak to the public hearing, and it was closed.

The Board discussed the appeal of the diagonal alternative. Dave Marshall said that in creating the look of the "Gateway to Maine," the landscape was pleasing with a cow pasture and Stonewall's village-like buildings. Tom Manzi suggested appealing the decision, using the argument that Torbert MacDonald had made in his newspaper letter. Barrie Munro agreed that making an appeal might make an opportunity for DEP to see its error. Glen MacWilliams said that from experience, having an appeal encompasses having a permit application that has been denied. In this case, no permit had been applied for. The communication with DEP was verbal. Mary Smith explained that from a pre-application meeting with DEP, she learned that if CMP had put in for a permit, it would be denied. Neither was there an official denial letter. Michelle Moody, Torbert MacDonald, Stan Moody, and Mark Greene were all present when DEP turned the alternate route down. Laurie Downs said that starting the permitting process from scratch would lead to lengthy PUC involvement, which could cause everything obtained to that point to be lost. The Planning Board already passed an alternate route. Barrie Munro suggested the matter go to the Selectmen. He said he wanted to table the business until the matter has had more consideration, which Dave Marshall said he would support. Steve Burns said that CMP has 3 State permits, and they can't wait for some aspect to lag behind. All must run concurrently. The plans that were presented and approved were not the plans with the alternative route. They came later.

Chairman Glenn Farrell opened the Public Hearing. Torbert MacDonald recommended that the Board approve what CMP has presented. Simultaneously, the Board can pursue the alternate route, use political pressure in doing so, and can request CMP make a formal application as a backup. CPM has acted in good faith.

Peter O'Connor praised CMP for making a great effort with vegetation and being a generally good participant. He stated that the Planning Board should not hand the problem to the Selectmen, because Planning Board members have strong technical and ordinance-interpretation skills.

Laurie Downs also defended CMP, discouraging, for the sake of time, the Board from insisting CMP go through with a formal application.

Mary Smith said that Stonewall was willing to cooperate with the original plan, but that the formal easement had not yet been established. Dave Marshall said that the Board cannot "just give them what they are seeking." It is important that the Board does its job. Glen MacWilliams argued that the Board must make a decision to allow CMP to go forward, and to consider future dealings with CMP, as well.

**Motion** Glen MacWilliams moved to accept this plan as shown that evening. Barrie Munro seconded the motion.

**Discussion** Barrie Munro said that he wished to have a formal request sent to DEP, Don Gallagher, and the Project Manager reflecting the ramifications on the Town by what is

proposed. Tom Manzi said he agreed to the appeal of the ruling, as the citizens would not like the Planning Board to “roll over.” Dave Marshall said that trying to get an application in to DE P would not work, because the line will be in. Glen MacWilliams said that an appeal is not an issue. A permit has not been filed. He stated the the Board had no remedy. Every citizen should be able to bring the situation to bear. The Board should let the DEP know how it feels. Glenn Farrell suggested an amendment to the motion, requiring taller trees.

Mary Smith explained that CMP has the understanding that both routes were approved. CMP has sought bids, the substation work is ready to start, and the line contractor is about to be selected.

Steve Burns read the already established Plan Note regarding the original route being *accepted* and the diagonal route being *investigated*. Tom Manzi stated that success is not defined until the appeal is made. The verbal denial is not sufficient. The real question is whether there was enough of an effort to get the diagonal route.

**Amendment** Glenn Farrell suggested amending the Motion by changing the heights of the 20 proposed trees, currently 4-6 ft. tall and 6-8 ft tall, to 20 trees that are all 8-10 ft. tall. Glen MacWilliams accepted the amendment to the Motion he had made. Barrie Munro seconded the proposed amendment.

**Vote** The vote to accept the CMP plan as shown that evening was defeated, 2-3, with Barrie Munro, Dave Marshall, and Tom Manzi against.

**Motion** Dave Marshall moved to table the application until the next meeting to allow time for Selectmen and other groups to pursue other means of appeal to DEP and seek a preferred alternative alignment. Barrie Munroe seconded the motion.

**Discussion** Glenn Farrell said that Barrie Munro and the Planning Board should send a letter DEP and the Project Manager repeating various rationales for reconsidering its decision over not permitting the route. Barrie Munro said the Board would accept a written declaration to that as proof. Steve Burns said that the Planning Board would have to prove that CMP has not been successful in demonstrating an effort in applying to the DEP. Glen MacWilliams pointed out that the poles had already been approved, but the planting had not.

**Vote** The Motion to Table passed, 3-2, with Glenn Farrell and Glen MacWilliams opposed.

Mary Smith stated that CMP must either move ahead and accept the bids or stop the project. Had the planting or was it the route that been tabled? Glenn Farrell interpreted the vote to mean that the Board is not dealing with the Stonewall buffer, because the Board is waiting for a sign of a good effort. The Board wants a letter from DEP saying that has been a good effort made. CMP has the right to start the other line. Barrie Munro added that the Board has no proof that the DE P has denied a formal application.

Mary Smith was not confident that something in writing would come from the DEP. There were 4 people from York at the meeting, and they heard the same thing. Glenn Farrell said the Board was willing to accept a letter from DEP saying that they won't send such a letter. He believed CMP has the right to build the line. Glen MacWilliams agreed and explained that the Board voted with their hearts, but CMP has the right to build.

John Carroll of CMP asked if CMP has a resolved route, with or without the letter. Glenn Farrell polled the Board. Tom Manzi said he would appeal the route. Dave Marshall said that he did not know. Glenn Farrell, Glen MacWilliams, and Richard Smith agreed they would approve it the original route. Barrie Munro said he would approve it, if effort by CMP were demonstrated.

**Proposed Ordinance Amendments. Public Hearings to receive input on the following proposed amendments. (Posted Amendments have a draft date of January 9, 2004).**

**1. Zoning Ordinance—Structure Expansion Limits in the Shoreland Overlay**

Chairman Glenn Farrell opened the Public Hearing. Michelle Moody asked questions about rebuilding torn-down, pre-1989, non-conforming buildings. Glenn Farrell answered that they cannot be rebuilt, at all. Steve Burns described the ordinance as “pretty tight,” with regard to what Michelle Moody described as buildings with variances that have special exceptions. Glenn Farrell closed the public hearing. In discussion, Glen MacWilliams asked about the consistency of the setbacks in Amendments 1 and 3. Steve Burns answered that the two ordinances can stand alone.

**2. Zoning Ordinance—Shoreland Variance Standard**

The Public Hearing was opened and then closed. There was no Board discussion.

**3. Zoning Ordinance—Setback and Buffer in Mixed-Use Shoreland**

The Public Hearing was opened and then closed. There was no Board discussion.

**4. Zoning Ordinance—York River Watershed Overlay District**

The Public Hearing was opened. Torbert Macdonald identified himself as the author of the proposed ordinance, with the assistance of Glen MacWilliams and Barrie Munro. He described the elements of the ordinance. He recommended that the percentage of impermeable surface coverage be returned to from 15 to 25 percent. He asked the term “sewage sludge” be added in §10, and he asked that the term “Planning Board approved” be added before the list in the Buffers section.

Rick Bordman did not see how the Town could prevent people from putting Weed & Feed on their lawns. He envisioned crabgrass on the fairway at the York Country Club, if inorganic herbicides are banned. He thought that a requirement to hire an engineer in certain circumstances should be changed to a requirement to hire somebody with credentials. The Public Hearing was closed.

In discussion, Steve showed a map of the proposed Watershed District showing the streams that would be regulated with the 125 ft. setback and 100 ft. buffer. He said that a new map is needed.

#### **5. Zoning Ordinance—Minor Dimensional Variances**

The Public Hearing was opened and then closed. There was no Board discussion.

#### **6. Zoning Ordinance—Site Plan Review Authority**

The Public Hearing was opened and then closed. There was no Board discussion.

#### **7. Zoning Ordinance—Buildings and Structures**

The Public Hearing was opened and then closed. There was no Board discussion.

#### **8. Zoning Ordinance—Clean Up Outdated Telecommunications References**

The Public Hearing was opened and then closed. There was no Board discussion.

#### **9. Zoning Ordinance—Formula Restaurant Prohibition**

During the Public Hearing, Greg Filias, owner of Food & Co. on Rt. 1, said that he feared the ordinance would prevent him from opening another location far from York without being considered a violator of the York ordinance. He recommended that language be added so a restaurant could have its corporate headquarters in York.

Rick Bordman said that the ordinance would disallow someone to call in an order to Wild Willy's from a cell phone in a car. He wondered why the Town would want to limit Wild Willy's to one store, if Wild Willy could put one on the Kittery line or near the Ogunquit Playhouse. Peter O'Connor said, "Don't force him to change the way he is doing business."

Torbert MacDonald referred to the Equal Protection Amendment in the United States Constitution, saying that what you do to one, you must do to another. All restaurants have to be treated essentially the same. Furthermore, if somebody is doing business in York, they are grandfathered.

Kathy Goodwin, Executive Director of the Chamber of Commerce, was concerned about jeopardizing those businesses that are doing things the way the Board wants. She sug-

gested changing the wording. “Formula” businesses now include banks, gas stations, and realtors. “Design standards” might be an alternative approach.

In discussion, Richard Smith said he did not agree with the ordinance, summing it up as, “Don’t come to my town with your restaurant, but don’t stop me from going to another town to build my restaurant there.” Steve Burns also brought up equal protection by citing a New Hampshire Supreme Court decision that allowed formerly forbidden signs with moveable letters in front of restaurants, because movie houses could have them. It was an example of eliminating a dual standard.

Mr. Filias stated he wanted to be able to open a second, similar restaurant in another state. With the headquarters in York, he wants to be able to expand the one in York. Barrie Munro said that all this started years ago when McDonalds wanted to put a store in York. Torbert MacDonald said that York couldn’t control something across the state line.

More aware of some of the problems with the proposed ordinance, Barrie Munro, with the assistance of Glen MacWilliams and Dave Marshall, planned to work more on the language.

## **10. Zoning Ordinance—Traffic Impact Study Requirements**

The Public Hearing was opened and then closed. Glen MacWilliams pointed out a place in the ITE Trip Generation Manual where the word “discussion” should be changed to “direction.”

### **Other Business/Adjourn**

Michelle Moody asked for another CMP vote to take the matter off the table. She said, “If you had sat there, you would understand there is not a chance.”

### **Discuss MacWilliams’s Memo Dated January 4, 2004**

The Glen MacWilliams memo was in response to an earlier memo from Steve Burns, in which Steve Burns stated that the ordinance system is overly complicated. He spends a great deal of time dealing with the taxpayers who come to his office for advice. Glen MacWilliams said that Steve Burns’s job must be difficult to administrate, but that he felt Steve Burns spends too much time with the public. He thought Steve Burns should minimize the amount of time he spends assisting developers.

Barrie Munro suggested that the Board should work toward doing a better job. He brought up the proposed retreat Tom Manzi was helping him with.

Glenn Farrell asked board members if they wished to reconsider the CMP motion to table that was made earlier. Only Glen MacWilliams stated he was willing to reconsider. The meeting was adjourned at 11:00.