

York Planning Board
Thursday, December 20, 2007, 6:00 P.M.
York Senior Center

Call to Order, Determination of Presence of Quorum

Chairman Glen MacWilliams began the four-and-a-half hour meeting at 7:00. He determined presence of a quorum. Beside Glen MacWilliams, Vice Chairman Tom Manzi, Barrie Munro, Dave Woods, and Lew Stowe were in attendance. New alternate Todd Frederick attended his first meeting, but did not vote. Town Attorney Durwood Parkinson was present for the 6:00 meeting and for the Borkowski (Woodside Meadows) review. Town Planner Christine Grimando represented Planning Department staff. Patience Horton took minutes. The meeting was not televised. It was tape-recorded, but the recording was not coherent.

Meeting with Town Attorney 6:00 to 7:00 P.M. Expected to be in executive session.

Chairman Glen MacWilliams stated there were no decisions made during the executive session.

Public Input

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

No one came forward to speak.

Field Changes

There were no field changes.

Minutes

The **November 8, 2007**, minutes were discussed. There were no corrections.

Motion Tom Manzi moved to accept the November 8 minutes as submitted. Lew Stowe seconded the motion, which passed 5-0.

The **November 29, 2007**, minutes were discussed. Glen MacWilliams had typos for correction and handed them to the recording secretary.

Motion Tom Manzi moved to accept the November 29 minutes as amended. Dave Woods seconded the motion, which passed, 4-0. Lew Stowe had not been present at the meeting and did not vote.

Application Reviews and Public Hearings

- **Borkowski Off the end of Woodside Meadow Road.** Property located in Kittery. Application for subdivision in Kittery with sole access in York

Project engineer Steve Haight briefly skipped to the matter of **Highland Farm**, located later on this agenda. He asked for a 30-day postponement for the Highland Farm application.

Motion Barrie Munro moved to allow the 30-day postponement for the **Highland Farm** application. Tom Manzi seconded the motion, which passed, 5-0.

On the **Borkowski** application, engineer Steve Haight summarized the application on behalf of the applicant, HDV Enterprises. The police, public works, and fire departments of Kittery and York had conditionally accepted the plan for the subdivision located in Kittery with access only from York. Town managers from both towns had reviewed the agreements. Applicant attorney Katherine O'Connor, of Perkins Thompson, said HDV Enterprises will maintain the private road, and the Town of York will not have to maintain it. The children will attend Kittery schools. York DPW will pick up the trash at HDV's expense, because the subdivision is at the end of a York road. The same situation exists in different parts of York, where subdivisions in Ogunquit and Kittery are only accessible through York. The fire, police and DPW have signed off, as have the town managers. Dave Woods asked if Kittery personnel have signed the Mylars, because department heads had signed them in York. She answered they would not be signed until York Planning Board approval is given.

Katherine O'Connor addressed legal issues: the Town of Kittery had informed the petitioner that Kittery sent out notices to the list of abutters. Also, there was the issue of whether the second access was required, because York ordinances read that the second access is required for subdivisions with 15 lots or more, and this one has five. In fact, the access in question was on the plan for Woodside Meadows Phase 3. The performance guarantee would be released when the developer and public works director make the guarantee accessible, and it does not impact the subdivision. HDV is hoping to get preliminary and final approval this evening, she added.

The chairman opened the **Public Hearing**. **Emery Hutchins**, of Woodside Meadow Road, said he had been at that location for 26 years and has watched Phases Two and Three develop. He urged all town groups, like the planning board, to promote the public good. The current Woodside Meadow is good, but the proposed development changes that. He said it is not broken and it does not need to be fixed.

Attorney **Sandra Guay** said she was representing the **Tarboxes**. She said the distance from this subdivision is several miles from the town public services. Also, the applicant feels it provided adequate notice of hearings, but the abutters said they never received notice. The mutual aid assistance agreements had been signed, but they are not first responder agreements. Backup assistance would be necessary from another town. Also, when the current agreements are signed, this type of use was not consistent. The five-foot strip at the end of the cul-de-sac was created to prevent access from the cul-de-sac into Kittery. The rights-of-way were created to access Bookerfield and Kittery Pastures.

She stated there was a question of exactly when the easement was granted. It was also unclear if the right-of-way that had been passed to the abutters was acceptable by statute. By statute, if a town road at the end of a cul-de-sac connects with a private road, the connection has to have a significant improvement. By Article 9 Section 9.3 of the subdivision regulations, if a proposed right-of-way has not been accepted in a subdivision, and the developer does not reserve it after a period of time, the right-of-way passes to the abutter. The chairman asked the speaker, Sandra Guay, to stop for a moment, and the members looked up the article. Sandra Guay went on to discuss solid waste pickup and the vehicles that travel on York roads. There should be compensation from Kittery for wear and tear on York roads. The money for such upkeep currently comes from York taxes.

Bob Tarbox discussed a letter from Town Planner Christine Grimando to the planning board about York emergency services being the first responders to emergencies at the new Woodside Meadows. He had spoken to Mary Andrews and Carol Macintyre, who had created the language for the agreement. Bob Tarbox said they believed the language should state that York would not arrive there until Kittery responds. He went on to show a sketch of the cul-de-sac where the pavement ends. Beyond it there are 13 feet of unpaved ground before the five-by-fifty-foot right-of-way begins. Board member Dave Woods said the Blaisdell logging equipment goes over the asphalt portion of the right-of-way without damaging it. Crossing it elsewhere would cause the equipment to sink in somewhat. On the sketch, Bob Tarbox showed the area that has to be built up. Carroll Blaisdell had told him that Woodside Meadow would never be extended into Kittery. Bob Tarbox said that **Leon Moulton** had also stated, in a letter, that Leon Moulton remembers Carroll Blaisdell's saying development would never go beyond Woodside Meadow. Carroll Blaisdell stopped the pavement to make the extension impossible. Bob Tarbox does not want the access to Kittery to exist, because it was never intended to be. York carries the responsibility of the mutual aid and the town road agreements.

Katherine Tarbox said she had recorded activity on the cul-de-sac by keeping statistics and photographs for several months. She felt traffic and safety are the greatest specific issues. Beside residents, the major users of the street have been children, pedestrians, people walking dogs, service trucks, the mail truck, and hunters. There are very few drive-bys and general traffic. Her concern is the increased traffic. In her photographs, she showed the street as it is, with no signage or lights. She showed the end of the cul-de-sac with an island of trees and rocks. From her driveway, there is no current visibility of the location of the new street. Katherine Tarbox said she had not received abutter notice from Kittery. If joint meetings were held, the applicant would not have gotten to the point of violation. If there were four meetings, did she miss the mail four times? The Blaisdells did not receive notice, others, too.

Bob Tarbox returned and briefly discussed the traffic hazard.

Lawrence Decato had purchased a lot in the new subdivision. Nothing had progressed in the matter since April, 2007. He had been told that the easement was legal. He had checked the regulations and ordinances in both towns and found the subdivision meets

the requirements in Kittery. Traffic and safety are the issues in York. The fire chief, police chief, and head of the department of public works had no disagreement about the subdivision—though trash removal could be a problem—and everything was covered when they signed the Mylars. His group has the right to use their land, he said.

Cory Tarbox understands everyone's frustration. As a York voter, she believes that the agreement with another municipality should have been done better. Unfortunately, it has gotten to this. If Steven Blaisdell had come before the board when he sold the five-by-fifty-foot right-of-way, it never would have gotten this far. This is a matter of standing up for the town.

Lawrence Decato spoke again, this time about the mutual aid agreements. The first responder will be a handled like it is everywhere else. With the subdivision being 5.1 miles to the Kittery police station and 7.1 miles to York's, the one who gets there first will handle it, just like everywhere else. The children in the subdivision will attend the Kittery schools. The Kittery residents at Woodside Meadows are going to get gasoline and eat in the restaurants of York. The economy will improve as tradesmen such as carpenters and plumbers pick up more work when things could be slowing down. The addition of the subdivision is not necessarily a negative.

Tom Cifrino referred to the matter as "a slugfest over five houses." The process lacks civility. He lives in York close to the Eliot border, and the closest responder to a call is the one that gets there. He referred to several of the other speakers at the public hearing as having narrow self-interest, and he asked why anyone wants to abridge other people's property rights. What is planned is an appropriate use. There are many benefits to the addition of the houses, and he is not sure that political pressure will make the situation better.

Bob Tarbox added that if York will respond every single time, that is not mutual aid.

Sherry McConnell said she does not believe Carroll Blaisdell wanted an additional subdivision. He had drawn out his plans for Phase 2 for her and stated the five-by-fifty-foot strip was there to protect Woodside meadows. Carroll Blaisdell did not want to have this, and his desire should be noted.

Applicant Attorney Katherine O'Connor said she was not sure what Carroll Blaisdell said, but the cul-de-sac is a public road that can be accessed no matter what town someone lives in. Steven Blaisdell had indicated to her that the five-by-fifty-foot strip would never allow access to the road without paying him for it. But, the cul-de-sac is a town road, and improvement of the town road requires a town meeting, but, according to the DPW, this is not a major improvement that requires a town meeting. If the Tarboxes feel that people do not have the right to cross the five-foot strip, they should take it to court, not the planning board. The notices sent by Kittery only have to be notices of the application, not of the individual meetings. The five-by-fifty-foot easement is an issue that can be resolved by making a note as an amendment to have the easement removed from the plan.

Attorney **Sandra Guay** spoke again on behalf of the Tarboxes. The five-by-fifty-foot strip is not part of the public road. It is part of the right-of-way. The planning board should have made it clear who has the right title and interest to the strip. All approvals should be void, if there is no right to the title there. The building of 13 feet of road means acceptance by the Town of York as a public road.

Tom Haight spoke about the five-by-fifty-foot right-of-way, saying the Blaisdells exercised the right to sell it to Kowalski. No one else spoke. **The public hearing was closed.**

Barrie Munro said the letter from Christine Grimando to the York Planning Board contained pertinent issues that should be reviewed and on which the board should come to a decision. That memo was dated December 4, 2007 and regarded the Borkowski Application, Subdivision in Kittery, with Access Through York. It contained five items in italics that were read individually and were followed with discussion.

Has the issue of abutter notification been adequately addressed, and if not, what remedy is the board requesting? Lew Stowe said a letter from Sandra Mawrey stated a list of existing abutter names exists. Applicant engineer Steve Haight said labels and copies of labels had been provided to both York and Kittery. Lew Stowe asked if it was York's responsibility to send out the notices.

Christine Grimando asked the board if abutter notification had been adequately addressed. The applicant had said they had gotten the notice out. If Kittery did not take up notification properly, it can be discussed, and if something was not conducted properly, it should be handled with hearings. Barrie Munro said it might be a technical or legal issue whether or not proper notice was given. Maybe it should be a condition of the approval. Town attorney Durwood Parkinson asked if the matter were sent to superior court, would the planning board succeed? Dave Woods said Kittery policy is to issue notice once, and York issues notices for every meeting. York is holding Kittery to York's standard.

Motion Barrie Munro moved that in the matter of notification, the York Planning Board should recommend to the abutters that, if they are dissatisfied with the process as conducted by the Town of Kittery, the abutters should contact the Town of Kittery to that effect. Tom Manzi seconded the motion, which passed, 5-0

The second question posed by Christine Grimando in her December 4 Memorandum stated: *The Board needs to decide 1) if the two mutual aid agreements submitted with this application are necessary, particularly the draft agreement which addresses Emergency Services, 2) as it seems much of it is accounted for by the already existing Town-wide fire and police agreements to the Board of Selectmen for approval, and 3) how plan approval will be linked to these agreements- I think plan approval subject to a precedent condition of signed mutual aid agreements governing emergency services and trash pick-up would be sufficient.*

Christine Grimando said two mutual aid agreements are necessary. She described changing the text before the agreements are approved and related how approval should be connected to the agreements in terms of trash pickup.

Motion Barrie Munro moved that the board does not have the legal ability to decide on the language for the mutual aid agreements and should request the town attorney to come up with the recommended language. Tom Manzi seconded the motion.

In discussion, Glen MacWilliams suggested making the agreement a condition for approval. Barrie Munro said on January 10, 2008, the time limit expires, and the board must come up with a conclusion by then. This agreement might be a provision. Glen MacWilliams suggested a friendly amendment. The added specific language was, "The request to work out the mutual aid agreements would be a condition of the approval."

Amended Motion Barrie Munro moved that the board does not have the legal ability to decide on the language for the mutual aid agreements and should request Town Attorney to come up with the recommended language. The request to work on the mutual aid agreements would be a condition of the approval. Tom Manzi seconded the motion.

In further discussion, Christine Grimando clarified that the emergency services and trash pickup are the subjects of the agreement being discussed. Applicant engineer Steve Haight asked if the board wants more clarification in the current agreement. York's town attorney, Durwood Parkinson, replied the current agreements are bare bone agreements, and they have to contain full compliance of the statute. Glen MacWilliams said the January 10 deadline could be extended. Dave Woods thought the fire chief, police chief, and the selectmen as well, should approve the Durwood Parkinson's completed agreements.

Vote The Amended Motion passed, 5-0.

The board moved on to the next item in the town planner's memo. *There are two options for how the current application can be defined: the first option is that the current application is a fourth phase of Woodside Meadows subdivision by virtue of its adjacency and connection to Woodside Meadows Road; the second option is to consider this a new application which will tie into the existing Town road network at the cul-de-sac.*

Glen MacWilliams said the secondary egress road was altered without planning board approval. The homeowners have to maintain the emergency road. The problem with the cul-de-sac has been how to deal with it in regard to traffic. If the requirements can be met, there could be a conditional approval. Compliance with Sub. Regulation 1.2.5 requires that a traffic engineer provided by the applicant shall make an independent assessment. Steve Haight asked if the impact on safety should be the focus of the traffic study. Barrie Munro replied that the focus is whether or not the current road will carry the load of the added traffic.

Motion Barrie Munro moved that to satisfy the conditions of Sub. Regulation 1.2.5, an independent traffic study would be conducted. Dave Woods seconded the motion that passed, 5-0.

The group moved on to the fourth point of Christine Grimando's December 4 memo: *How will the denial of the plan revision, which provided the connection of the current application to a public way, effect review of this application?*

Christine Grimando said lack of access from the subdivision to a public way has two options for resolution. Resolution of the issues could be a precedent condition of approval, or an option could made for resolution of the issues to be precedent conditions.

Glen MacWilliams said the applicant had indicated a possibility of taking the five-by-fifty-foot easement strip off the plan. Applicant Attorney Katherine O'Connor then confirmed that the applicant had agreed to take the strip off the plan.

Motion Dave Woods moved that the applicant eliminate the five-by-fifty foot easement strip from the plan by converting it back to Steven Blaisdell. The easement strip would then be conveyed back to the applicant as an easement, combining it with the current easement to make the easement larger. Lew Stowe seconded the motion.

In discussion, Kathleen O'Connor said she would work with Durwood Parkinson to create the easement. The board agreed it would make a condition precedent. The deed would be filed.

Tom Manzi asked if there is a legal way to address the five-foot strip that the neighbors have said was put there to protect them. Barrie Munro responded that there is no mention in the plan or in the findings of fact that can be considered to have a legal bearing on this matter. Durwood Parkinson added that the matter is complicated and outside the jurisdiction of the Planning Board.

Vote The motion passed, 5-0.

The next issue, §9.3, dealt with the new road leading through the new subdivision. Dave Woods said the guideline for a private cul-de-sac that stems off a private road has to meet the town's standard. The developer can have the road built under the advice and standards of the Department of Public Works. Steve Haight compared the private road as a driveway that connects to a public street. The Tarboxes's attorney Sandra Guay argued with Steve Haight's statement, saying it is not like a driveway, but is rather a private road going onto a public road.

Section 9.3 of Article 9 in the Site Plan and Subdivision Regulations, which requires any improvement to a public road to obtain town meeting approval, remained the outstanding issue. Chairman Glen MacWilliams indicated that since the regulation existed, and since the cul-de-sac was a Town road, and since the extension would have to cross over a right-of-way owned by the Town, the regulation should be enforced. Barrie Munro countered,

stating he could not recall the planning board ever having invoked this regulation. He recommended that the board waive the regulation per §12.1 of Article 12 in the Town's Site Plan and Subdivision Regulations. Glen MacWilliams stated he favored requiring town meeting approval. To this, Dave Woods replied that it would, in effect, establish an entirely new Town standard, since it has not been required in the past. This new standard could have significantly negative, unforeseen consequences. Glen MacWilliams replied that in the future, when appropriate, the regulation could be waived.

Motion Barrie Munro moved to waive Article 9.3 of the Sub Regulations, stating that to do so would satisfy the intent of the ordinance. Dave Woods seconded the motion, which failed, 2-3. Barrie Munro and Dave Woods were in favor, and Glen MacWilliams, Tom Manzi, and Lew Stowe were opposed.

Motion Tom Manzi moved that to make the additional improvement to the existing public street, the applicant must obtain public town approval in accordance with §9.3. Lew Stowe seconded the motion.

Attorney Durwood Parkinson said it might be helpful to understand the deed that had been granted to the Town—if it was dedicated to the Town—and the limitations of the right of way. Perhaps it would be helpful to talk the director of public works or community development director Steve Burns about situations analogous to this.

Glen MacWilliams added the friendly amendment to the motion saying, “if the proposed road extension accessing the cul-de-sac turns out to be a town road. . .” Tom Manzi agreed with the amendment.

Amended Motion Tom Manzi moved that if the new cul-de-sac turns out to be a town road, then to make the additional improvement to the existing public street, the applicant must obtain public town approval in accordance with 9.3. Lew Stowe seconded the motion.

Vote The motion passed, 3-2. Glen MacWilliams, Tom Manzi, and Lew Stowe voted in favor, and Barrie Munro and Dave Woods were opposed.

Kathleen O'Connor asked if the town meeting vote would be part of the condition of approval. She did not know if any other applicant in York had been asked to do so. She asked if the town meeting would come up in the fall, because the deadline for May was approaching. The chairman affirmed that the town vote would occur in the fall.

Barrie Munro thought the applicant should be advised about continuing, discontinuing, or appealing. Kathleen O'Connor said if the traffic report is submitted and identifies no issues, it should be the end of that process. She asked what else is required. Glen MacWilliams said before January 10, the mutual aid agreements, waste, traffic, and the amendment of the first plan were due. Durwood Parkinson recommended the board review the following criteria of approval.

1.2.1 Pollution: all yes; 1.2.2 Sufficient Water: all yes; 1.2.3 Water supply: all yes; 1.2.4 Erosion: all yes; **1.2.5 Traffic: pending**; 1.2.6: Sewage Disposal: all yes; **1.2.7; Disposable Waste: pending**; 1.2.8 Natural Values: all yes; 1.2.9 Natural Values: all yes; **1.2.10 Conformity to Ordinances: pending**; 1.2.11 Surface Waters: all yes; 1.2.12 Ground Water: all yes; 1.2.13 Flood Area: all yes; 1.2.14 Fresh Water Wetlands: all yes; 1.2.15 River Stream or Brook: all yes; 1.2.16 storm water: all yes; 1.2.17: all yes; 1.2.18 Phosphorous Concentrations: all yes. 1.2.19: Four yeses and 1 pending.

Durwood Parkinson said once the three pending items are in, the board can decide if the criteria have been met. Kathleen O'Connor confirmed which items were pending items. The application review ended.

- **York Beach Re-Zoning Discussion with York Beach Renaissance Committee on the current status of the proposed zoning changes, Design Standards, and remaining work to be done going forward. Note: This will be a workshop, with opportunity for public input.**

Dawn Fernald, chairperson of the York Beach Renaissance Committee, discussed design standards. The committee had met three times since the last hearing, and they had not finished their work with 6.4, public parking. She talked about impact fees for new businesses that will not pay for additional parking. That money would not be Tax Incentive Financing funds. Glen MacWilliams suggested keeping the parking in the transition zone, if possible. Committee member Joe Lipton said, if the impact or impact fee were examined, the Planning Board could give exemptions for parking. Barrie Munro said parking is either for residents, visitors, or shoppers.

Christine Grimando said the next meeting with the Renaissance would be on January 10, 2008. Section 6.4(c) had been changed to encourage outdoor entertainment and dining. She read from the design standards about changes of existing buildings, new construction for planning board review, and pointed out minor changes made in use tables.

- **York Hospital 15 Hospital Drive. Tax Map 0050, Lots: 6A, 11, 22, 23, 23A, 24, 26, 30, 32, 33, & 34. Preliminary and Final Review of a Site Plan Application for Hospital expansion.**

Eric Weinrieb, of Altus Engineering, Eliot, had highlighted changes on the plans. He handed out copies with added grading and notes of clarification. He went over changes to the surgery center landscape plans, and overall changes with added trees and slopes that cover pipes. Barrie Munro asked if all differences of opinion had been resolved. Eric Weinrieb answered OAK Engineering had not had a chance to complete its work. He handed out an email about non-conformity and other issues, which Hospital spokesman Steve Pelletier said would be resolved however the Town wanted it resolved. The letter of credit performance guarantee had been given to the Town Attorney.

The placement of the sign remained an outstanding question. Eric Weinrieb stated he hoped for the placement to have the best visibility. Currently it is setback and could be

changed for better visibility from York Street. Hospital abutter Kinley Gregg asked about staging around the Strater wing and placement of construction trailers. Steve Pelletier explained how building the parking lot first would allow the hospital to get the vehicles out of the way. He added he has always worked successfully with Kinley Gregg. Steve Pelletier discussed the arrival of delivery trucks to the hospital and asked how information about them would go into the findings of fact. The board went over the criteria for approval per Article 1.2 of the Sub Regulations and gave their approval or disapproval of the applicant's actions regarding the following issues.

Pollution: all yes; **Sufficient Water:** all yes; **Water Supply:** all yes; **Erosion and Silt:** all yes; **Traffic:** all yes; **Sewage Disposal:** all yes; **Traffic:** all yes; **Sewage Disposal:** all yes; **Solid Waste Disposal:** all yes; **Aesthetic, Cultural and Natural Values:** all yes; **Conformity to Local Ordinances and Plans:** all yes; **Technical and Financial Capacity:** all yes; **Surface Waters:** all yes; **Flood Areas:** all yes; **Fresh Water Wetlands:** all yes; **Fresh Water Wetlands:** all yes; **River Streams and Brooks:** all yes; **Storm Water:** all yes; **Spaghetti Lots:** all yes; **Large Phosphorous Concentrations:** all yes.

The board discussed provisions of storm water quality and floodplain management, and found those issues suitable for inclusion in the plan notes.

Motion Barrie Munro moved to approve the application with two conditions precedent: placement of the signage and acquisition of department head signatures. Dave Woods seconded the motion, which passed, 5-0.

- **Baxter/Martin Land Swap Darcy Road and Boban Road. Tax Map 0045A, Lots 46, and 47. Proposed lot line revisions for common boundary between two residential lots. Application to revise an existing subdivision plan.**

Christine Grimando said the Findings of Fact had been submitted, and the application was straightforward. The revision of the boundary is a lot line revision. It is an even swap between the two properties.

Motion Barrie Munro moved to approve the Baxter/Martin Land Swap application and the attendant Findings of Fact. Tom Manzi seconded the motion, which passed, 5-0.

- **Ledges Golf Course. 1 Ledges Drive. Tax Map 0089, Lot 45A. Proposed addition to Clubhouse. Revision to previously approved site plan.**

No one was present for this review. Glen MacWilliams said the applicant has an older plan previously signed by the planning board. He asked that the applicant return to the planning board.

- **Highland Farm Phase 2. 1 North Meadow Lane, and 250 Cider Hill Road. Map & Lot 0090-0029-A and 0090-0030. Continued consideration of preliminary review of a major subdivision.**

Earlier in the meeting [Page 1] Highland Farm project engineer Steve Haight had asked for an additional thirty-day extension to continuing preliminary review of the application. The board had voted on and approved the extension.

Other Business/Adjourn

Mylars for the DPW barn were signed. The time was 11:40.