

**York Planning Board**  
**Thursday, June 26, 2014, 7:00 P.M.**  
**York Public Library**

**Call to Order, Determination of Presence of Quorum**

Chairman Todd Frederick called the meeting to order at 7:00. A quorum was determined with four people voting: Chairman Todd Frederick, Vice Chairman Al Cotton Jr., Peter Smith, and alternate Amy Phalon, who was asked to vote as a full member. Lew Stowe was absent. Town Planner Dylan Smith, Community Development Director Steve Burns, and Stormwater Manager Leslie Hinz represented staff. Amy Phalon came in at 7:08 and voted on the third motion. Patience Horton took minutes.

**Public Forum**

No one came forward to speak.

**Minutes**

The minutes of February 20, 2014 were reviewed. No changes were requested.

- **Motion:** The chairman asked for a motion to accept the minutes of February 20, 2014. Peter Smith said, "So moved." Al Cotton seconded the motion. The motion passed, 3-0.

The minutes of the April 3, 2014 special meeting were reviewed. No changes were requested.

- **Motion:** The chairman asked for a motion to accept the minutes of April 3, 2014. Peter Smith said, "So moved." Al Cotton seconded the motion, 3-0.

The minutes of April 10, 2014 were reviewed and corrections were requested.

- **Motion:** Al Cotton moved we accept the amended minutes of April 10, 2014, which was seconded by Mr. Smith. The motion passed, 4-0.

**Field Changes**

**Cliff House Resort and Spa, 24 Shore Road, Cape Neddick, Maine**

Town Planner Dylan Smith said the owners of the Cliff House are changing the lighting fixtures on the entry road, per site plan regulation 5.6.5, Outdoor Lighting Fixtures. The original plan was approved in 2000.

Scott Strynar from Mohr and Seredian Landscape Architects said the current 400-watt fixtures every 35 feet are being switched to 75 low-wattage lamps every 20 feet. The new lamps will be strapped to trees.

Dylan Smith said per 6.3.6, there is unacceptable spillage of light onto the entrance. Otherwise, the fixture change meets code guidelines. Mr. Strynar said that spillage is caused by a streetlight, not these lamps.

Al Cotton asked if the applicant will show the entire proposal for this project. Peter Anastos of the Maine Hospitality Group in Freeport said the long-term plan is to make the Cliff House a premiere property. The plan will be developed over the course of a year.

Mr. Frederick opened an information **public hearing**.

**Cliff O'Connor** of Shore Road asked if the lighting on the maintenance building will be changed. Peter Anastos said that had not been addressed but now it will be addressed.

**Motion:** Al Cotton moved to approve the proposed low-voltage lighting plan. Peter Smith seconded the motion. There was no discussion. The motion passed, 4-0.

## **Application Reviews and Public Hearings**

### **York Colonial Center—Subdivision and Route One Use Permit. Four U.S. Route One. Map & Lot 0086-0001. Consideration for Final Approval**

Town Planner Dylan Smith said final approval was continued from June 12 two weeks ago. Minor adjustments were made to the notes, including definition of affordability for York Housing Authority, and utilization of best management practices for erosion and sediment control. He recommended conditional approval.

**Motion:** Chairman Todd Frederick asked for a motion to accept the York Colonial application as complete for consideration of final approval. “So moved, Mr. Chairman,” said Al Cotton. Amy Phalon seconded. Motion passed 4-0.

Project architect and representative Christopher Badeau confirmed that site work will be completed before the building is constructed. This note was added: “All wetland will be protected with construction fencing and proper erosion control best management practices. All site work to conform with the standards identified on these plans.”

**Motion:** Al Cotton moved to open the **public hearing**. No one came forward to speak.

Dylan Smith said that a pre-construction meeting will be held to make sure the site activity does not impact the abutters, the road, or the site itself. Al Cotton noted that the hours of operation are 7:30 A.M. to 7:00 P.M. If any operation wants to work past then, they can come into the Planning Board and change the hours as a field change.

**Motion:** Peter Smith moved that we accept the application from the York Colonial Center Subdivision and Route One Use Permit at Four U.S. Route One, Map & Lot 0086-0001, for final approval. Amy Phalon seconded the motion. In discussion, the Town Planner said the two issues in his memo, the signature blocks and the standardized plan notes, were addressed. The motion passed, 4-0.

**Motion:** Peter Smith moved that the board authorize the Chair to sign the Findings of Fact regarding the application of the York Colonial Center, Tax Map 0086 and Tax lot 0001. Al Cotton seconded the motion. There was no discussion. The motion passed 4-0.

## **Public Hearings—Proposed Ordinance Amendments**

**There are six proposed ordinance amendments.**

Todd Frederick said this is the third and last **public hearing** for these amendments.

### **Proposed Ordinance Amendment 1 of 6**

#### **MS4 Post-Construction Stormwater Management Ordinance**

Town of York Stormwater manager, Leslie Hinz said an erosion control and stormwater management violations report must be submitted before permits are issued. Subsequent reports are submitted to the town yearly reporting the upkeep of stormwater management.

**Motion:** The chairman asked for a motion to open the public hearing. Amy Phalon said, “So moved.” Peter Smith seconded. No one came forward to speak.

**Motion:** Al Cotton moved that we accept the Amendment 1, MS4 Post-Construction Stormwater Management Ordinance, as stated in the documents. Amy Phalon seconded the motion, which passed 4-0.

### **Proposed Ordinance Amendment 2 of 6**

#### **MS4-Non-Stormwater Discharge Ordinance**

Al Cotton said the ordinance could be summarized as, “If anything is done on your property, it stays on your property and doesn’t go someplace else.”

**Motion:** Al Cotton moved that we accept the Amendment 2, MS4 Non-Stormwater Management Ordinance and send it forward. Peter Smith seconded. The motion passed 4-0.

### **Proposed Ordinance Amendment 3 of 6**

#### **Require Septic System Inspections at Time of Property Transfers**

Septic system inspections are made at the expense of the seller, either by a licensed site evaluator or a state certified inspector. The chairman asked someone to open the **public hearing**. “So moved,” said Amy Phalon.

- **Wes Cook** works for Caldwell Banker Realty in York was on the committee that developed this ordinance. He said the ordinance is not necessary and was a waste of time. It penalizes the seller. Al Cotton replied there is a problem all over town because septic tanks that are not working properly. The town is looking for a way to stop that by developing corrective measures.
- **Greg Gosselin** owns a real estate business. He is asking the town not to accept the ordinance. His company insists that buyers must have homes and septic systems inspected. Otherwise, they sign a document that they will not have a home inspection. Inspections cost about \$350 or \$400 for a certified inspector. The site evaluator is around \$600 and is often a soil scientist or septic system designer.

- **Helen Rollins** was on the septic subcommittee. At first the committee strictly wanted licensed site evaluators perform the inspections. The real estate people objected to that, so the qualifications were expanded to include certified inspectors.
- **Bob Abrams** of Cape Neddick said Title 5 is a federal law that doesn't allow you to sell a house without a working septic system or connection to a sewer system. This amendment puts the burden on the homeowner who is already paying many taxes and fees. This requirement doubles the inspection fee. "We are taxed to death."
- **Mark Johnson** of Cape Neddick was opposed to past septic system regulations and saw friends spend a lot of money fixing up their septic systems. The water quality has improved.
- **Tim Roberts**, Cape Neddick, said some sellers might have financial problems. Can they absorb the costs if they are not solvent and have to sell the house? Leslie Hinz answered there are some low interest loans from the State of Maine. Al Cotton added that there is most likely help from agencies through the United Way.
- **Sherry Dabiere** of the Masiello Group in York said this amendment is not a good plan. The requirement of a civil engineer or site evaluator is to do system designs. They do not go out and actually do the inspections. The buyer should pay for the inspection. If there is a problem, they can negotiate with the seller.
- **Tim DeCoteau** said the certified septic inspector is a good resource. They get into the dirt. When site evaluators, the engineers, on the other hand, do a septic inspection, you are not making their day.
- **Helen Rollins** said with homes west of I-95, the fees for inspections of those systems amount to a "pittance," of the value of the homes.

Leslie Hinz read §13-a.3.d, Responsibility for Corrected Action. "The property owner on the deadline date for completion corrective action shall be responsible for all corrective actions. Sellers and buyers may make arrangements for completing work and/or allocating costs associated with such work that does not change responsible party with respect to the town enforcement action."

Community Development Director Steve Burns said it is certified in writing that something will be done within six months of the transfer of property. That is a period of grace. The intent of Title 5 is not that you have to do everything up front. There are time frames. You've got six months to take corrective action after the sale of the house, or three years if you don't sell the house. That gives time for negotiation. There is some flexibility for the buyers and sellers to negotiate that. Todd Frederick closed the **public hearing**.

**Motion:** Peter Smith moved that we approve Amendment 3, Required Septic System Inspections at Time of Property Transfer, forward to the selectmen. Al Cotton seconded the motion 4-0.

## **Proposed Ordinance Amendments 4 and 5 of 6**

### **4) Application Procedures for Piers, Wharfs, Docks, and Floats**

### **5) Standards for Piers, Wharfs, Docks, and Floats**

Amendment 4) Steve Burns said that the application procedures for piers, wharfs, docks, and floats are related to the interaction between the zoning ordinance and the harbor ordinance. The code office, the harbor board, and the board of selectmen are all involved because of zoning, harbor ordinance, and harbor and navigation statutes. Sometimes the three entities were getting different versions of applications. We devised the “world’s biggest rubber stamp,” so each board will sign one plan. By unifying the ordinance and requiring an engineered plan, the application becomes detailed.

Amendment 5) takes the six standards that the code enforcement officer administers in the zoning ordinance 8.3.6.9, Standards for Docks along the York River, reduces them to three, and transfer other standards to the Harbor Ordinance.

Chairman Todd Frederick asked to open the **public hearing** for application procedures and standards for Piers, Docks, Wharfs, and Floats. Peter Smith said, “So moved.” No one came forward to speak.

**Motion:** Al Cotton moved that we approve Amendment 4) Application Procedures for Piers, Wharfs, Docks, and Floats forward to the Board of Selectmen. Amy Phalon seconded. Motion passed 4-0.

**Motion:** Al Cotton moved that we approve Amendment 5) Standards for Piers, Wharfs, Docks, and Floats forward to the Board of Selectmen. Amy Phalon seconded. Motion passed 4-0.

## **Medical Marijuana**

Steve Burns said this ordinance categorizes medical marijuana with the business-licensing ordinance and as a land use within the zoning ordinance. Per 7.18.2, home production is exempt.

**Motion:** The chairman asked for a motion to open the **Public Hearing**. Amy Phalon said, “So moved.”

- **Sherry Dabiere** is opposed to this ordinance. It is unfair to the caregivers to limit them to that stretch of Route One. She prefers seeing medical marijuana grown a place like Bob Grant’s. Caregivers would rather grow in a facility like his. There is a stigma with medical marijuana. Her brother died from cancer and used medical marijuana. She would not object to people growing it next door to her house.

Steve Burns and the board discussed removal of two sections from the ordinance.

- a), the landlords could create the spaces before lining up tenants.
- g), loss of state approval nullifying local approval is already in the amendment.

Is this manufacturing or something different? This amendment would classify it and say it is different, said Steve Burns, if it isn't manufacturing, and it isn't agriculture. The maximum allowable plants, 110, do not come near the scale of "agriculture." The state suggests it is a commercial activity. The ordinance classifies it as a commercial activity.

Is putting the commercial activity in Route 1-3 enough? There might not be enough space in the Route 1-3 corridor. Manufacturing use is allowed in six zones. Not even including the Route 1-3 zone, 28% of town falls into that the commercial activity categorization. Restricting it to Route 1-3 is much smaller.

**Motion:** Al Cotton said I move that we accept Amendment 6, Medical Marijuana, with two exceptions under Performance Standards. We remove: a) Additional Tenant; and g) Loss of State Approvals, and we reorder the remaining items alphabetically and forward it to the selectmen. Amy Phalon seconded the motion. Motion passed 4-0.

## **7. Public Hearing—Comprehensive Plan Amendment**

Stormwater manager Leslie Hinz said that in 2011 the Cape Neddick River Association asked for a study of the Cape Neddick River watershed. The town hired a consultant to do the initial watershed based-plan, and then get it ready for a 319 grant. The Board should adopt the watershed plan into the Comp Plan, she advised.

The chairman asked to open the **public hearing**. Al Cotton said, "So moved."

**Linda Scotland** of the Cape Neddick River Association urged the Planning Board to vote yes in adding this great watershed plan to the comprehensive plan. This is the basis for the town moving forward to clean up the Cape Neddick River and beach.

**Motion:** Al Cotton moved that we accept Article 10 of Volume 1, Policy Chapter, Cape Neddick River Watershed Base Plan, and forward it to the Board of Selectmen recommending that it be placed in the Town Goals. Amy Phalon seconded. It passed 4-0.

## **Other Business**

- **Cliff House Request for Zoning Change**

Attorney Alisa Tibbitts said the applicant met with abutters on Saturday, June 14, to discuss property renovations. The Cliff House recently purchased one house on its campus, and the house cannot be rented through the hotel. It can be operated as a bed & breakfast, not a rental.

The existing zoning allows the Cliff House property use as a hotel and motel. That included all the Cliff House property that was owned by former owner, Kathy Weir, as of March 30, 1985. Since the hotel has now changed ownership, the ability to use the contiguous property in that use has expired.

The new owner wants to rent the single family home through the desk of the hotel and can't do that now. The applicant wishes to amend the ordinance to eliminate the March

30, 1985, date from the text. That is for the sole purpose of booking the house as a rental through the front desk. There is no plan to acquire other surrounding properties.

The chairman opened an informal hearing for abutters.

- **Mark Johnson**, 93 Bald Head Cliff, is concerned with the zoning change. Zoning affects more than the Cliff House. This is spot zoning. When looking at an overall plan, do not to look at it spot zone alone, but the totality of how it affects the town.
- **Ned Neao** had analyzed Alisa Tibbitts's letter. It implies the proposed zone change would allow the subject house to be demolished, and the land could be used for expansion of the hotel. Ms. Tibbitts said that was possible for Kathy Weir up until March 30, 1985, but not for the new owners.
- **Elizabeth Benoski** is the caretaker of 78 Baldhead Cliff, next to the 76 Bald Head Cliff house the applicant owns. The area should stay residential, not part of the Cliff House. The owners don't need to expand. They should stop buying family homes in residential areas.
- **Bob Abrams** asked for a larger copy of the plan. He requested that abutter meetings are held in the summer.
- **Tim DeCoteau** represents 11 out of 13 property owners adjacent to the Cliff House. They are most directly affected buy this amendment. They feel things are moving too fast. Moving an amendment to the November 2014, referendum is not a good idea.

## **Other business**

- **Planning Board Application Scheduling and Reviews**

Steve Burns went over some other planning issues.

The ordinance amendment for the Cliff House application will likely go to referendum in May 2015.

Steve Burns has charged Dylan Smith with the long term (2015) goal of writing the Stormwater Chapter for the Comp Plan.

The Mylars for Cape Neddick Village were signed by the board members.

## **Adjourn**

10:22