

TOWN OF YORK PLANNING BOARD
THURSDAY, MARCH 24, 2005, 7:00 PM
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Chairman Barrie Munro began the meeting at 7:05 by introducing the board and staff. Barrie Munro, Glenn Farrell, Richard Smith, Glenn MacWilliams, Tom Manzi, and alternate Michelle Moody were present. Alternate Lee Corbin was absent. Town Planner Steve Burns represented staff. Patience Horton took Minutes. The meeting was televised. Six motions were made.

The Comp Plan Amendments item, which was scheduled for this meeting, was put off until March 31, 2005. There was not enough time.

Public Input

Open to the public to address any issue other than issues scheduled for public hearings on the agenda.

Helen Rollins Lord showed the board photographs of Audrey Miller's yard with a pool of water over the septic system. She said the water was caused by fill on the adjoining property on which a house had been built. She said that similar damage had occurred at Susan Hatch's house. She handed out copies of two laws, which she read aloud. She said Chapter 25 (Bribery and Corrupt Practices) §608 (Official Oppression) was violated when the Code Enforcement Office allowed fill to be brought in, stopping the natural drainage. She also read Chapter 15 (Theft) §355 (Theft by Extortion).

Helen Rollins Lord asked if the Planning Board could re-write the zoning so that the Code Enforcement Office cannot harm people in the town. Glenn Farrell said that the Planning Board does not have authority over individual lots or Code Enforcement. Steve Burns said that the Selectmen initiate zoning changes. Helen Rollins Lord offered to "help get the zoning laws out of the twilight zone" by helping with the process however she could. She said, also, that the Crisp family believed that their neighbor's septic system had failed. She asked why the Appeals Board does not visit sites before making decisions. Steve Burns answered that the Appeals Board rules based on the Public Record. Michelle Moody said that they could go on-site, if they advertise they are going to do it, and then they have to follow rules, like not speaking to property owners.

Stan Moody, a member of the Conservation Commission, but speaking as a citizen, told the board of the rise and fall of the Shoreland/Wetland Committee, of which he was a member. It had originally been established to lighten the Planning Board's burden, but was then eliminated in a citizen's initiative that led to Shoreland/Wetland issues being decided by the Code Enforcement Office, without the benefit of public input. He added that that was terrible. The Chairman closed the public hearing.

Minutes

Review and approval of draft minutes for March 10, 2005.

Michelle Moody and Glen MacWilliams, who gave copies of the corrections to the secretary, pointed out non-substantive errors they wished to have changed.

Motion Michelle Moody and Glen MacWilliams moved and seconded, respectively, to approve the March 10, 2005 Minutes, as corrected. The motion passed, 4-0.

The Meadows at Highland Farm Subdivision. 301 Cider Hill Road. Map 90/Lots 29, 29A, 29B, 29C, 29D & 29E. Public Hearing. Consideration of Final Approval of the 13-lot subdivision to supersede the existing approval for the Highland Farm Subdivision.

Chairman Barrie Munro acknowledged a letter he had received from applicant Attorneys Peggy McGehee and Hope Jacobsen, as well as one from York's Town Attorney. Michelle Moody asked if she should recuse herself due to *ex parte* communication she had had with York Conservation Commission member, Stan Moody, her husband. Peggy McGehee said that there had been a second *ex parte* communication between a Planning Board member and an opponent, but that she just wished to go forward without having anyone recused. She said the second *ex parte* communication was between Glen MacWilliams and Doreen McGillis of the York Land Trust, as mentioned in a letter her firm found in a file the Planning Office had provided.

Chairman Barrie Munro asked for a statement from the applicant. Peggy McGehee compared the 1999 approved plan of the subdivision with 15 lots and a golf course, to the one made by applicant Steve Woods with no golf course, but a hay field, farming land, and a no-cut zone, instead. She said that the process of making the current application had been difficult. She asked the board to decide which plan was better. The day before, she had received a six-page list of the board's concerns, which she had not had a chance to fully review. She was particularly concerned and not pleased that the "25% standard" might be reviewed and changed again.

The Chairman opened the Public Hearing. Helen Rollins Lord said that Steve Wood had purchased her cousin's farm in Dover, New Hampshire, and had not fulfilled his promise to her relative to make the property into a horse farm. He had torn down a brick home on the property, and it was still rubble.

When David Tibbitts of the Conservation Commission came forward, Barrie Munro said that reaffirmations of previous comments were not welcome. David Tibbitts put a plan of the applicant property on an easel. It was largely colored in yellow. He handed out a page called "The Meadow at Highland Farm; Presentation of Conservation Commission Concerns Findings" dated March 24, 2005. He said that the map was colored-in at a Conservation Commission meeting before anything was ever discussed between Stan Moody and Michelle Moody. Peggy McGehee interrupted and said that David Tibbitts was bringing up the *ex parte* communication between Michelle Moody and Stan Moody. David Tibbitts continued. He went over several of the points in his memorandum, and

then stated, as the handout states, that based on Article 11 of the Ordinance, if the Planning Board approves the application, the Conservation Commission will file an appeal.

Stan Moody came forward to talk about wetland fill. Barrie Munro asked him to take up the issue later in the meeting. Barrie Munro ended the public hearing.

Chairman Barrie Munro went over ground rules, asking that the board not entertain questions from anyone while deliberating. He read a three-page document he had prepared called "March 24th Meeting Notes, The Meadows at Highland Farm, Chair's Procedural Notes." When he read the list of Possible Site Plan Approval Alternatives, he extemporaneously added "No. 8, The possibility of approving under conditional provisions."

A woman who had been watching the meeting at home came in to say something, but was not given the opportunity to speak. She said she lived near the Highland Farm property and would put the information she had to offer into a letter to the Town Planner.

The chairman said that the applicability of Zoning Section 7.6.1, dealing with limits of wetlands that can be on individual lots in a subdivision, would be treated first. Steve Haight said that the standard of 7.6.1 does not apply to the property. Cluster housing includes reduced roads and preserved opened space, which comes from land left over after smaller lots are created. There is no list of standards for cluster housing, he said, so 7.6.1 does not apply.

Richard Smith said that 7.6.1 was valid because it pertains to how many lots can be created. Tom Manzi brought up non-conformity. Glenn Farrell said that when 7.6.1 is waived, then non-conforming lots are not created. He said he did not have a problem waiving it, because the current layout is better than was approved (Barrie Munro left the meeting for a minute for a drink of water and returned before the upcoming motion was made). Glen MacWilliams agreed that 7.6.1 had to be waived. He started going over some of the Findings of Fact, specifically commenting on 18.10.1, wildlife, scenic views, and 10.2, the lay of the road.

Motion Richard Smith moved that 7.6.1 of the subdivision site plan regulations applies in this circumstance. Glen MacWilliams seconded the motion, which passed, 5-0.

The Chairman said that the next step would be to decide if 7.6.1 would be waived. Applicant Attorney Hope Jacobsen handed around copies of the Waiver Request to members of the board.

Barrie Munro said that the site plan satisfies all the qualifications of 1.3.12, the content of which Michelle Moody read into the record. Glen MacWilliams asked if the ground water issue had been satisfied. He said that he did not feel that storm water management had been satisfied, precluding the waiver. Barrie Munro said that the issue could be discussed later in the meeting.

Motion Glenn Farrell moved to waive Subdivision Regulations 7.6.1. Barrie Munro seconded the motion.

In discussion, Glenn Farrell said that the town engineer had reviewed and approved the plan. There was no evidence that the project would adversely affect ground water. Barrie Munro added that the original plan (the golf course plan) dumps water onto the roadway. Tom Manzi asked what consequence the waiver will have on homeowners who wish to build an addition or a garage. Glenn Farrell said that, if they meet the required setback, they can add on.

Michelle Moody brought up protection of the wetland as the appropriate step to take after approving the waiver. Town Planner Steve Burns asked engineer Steve Haight if the lot lines could be shifted. Steve Haight said that they could change the lot lines, though the lots would be smaller. Michelle Moody said that shrinking the lot size was a safe solution.

Peggy McGehee then put an objection into the record. She wondered if she had not made a mistake by not asking Michelle Moody and Glen MacWilliams to recuse themselves. She said that they were using information brought up in *ex parte* communications. She had hoped they would erase the information from their minds. She asked that they be recused at that time. Michelle Moody said she was discussing information board member Richard Smith had brought up during a Public Hearing held at the Senior Center. Peggy McGehee replied that moments before, the Conservation Commission had indicated that it would sue the Town, if the Planning Board approves the Highland Farm application. Michelle Moody recused herself. Peggy McGehee asked Glen MacWilliams to recuse himself.

Stan Moody said that he wanted to have the question of whether it was appropriate to have the applicant put in a written request [the waiver request Hope Jacobsen had handed to the Planning Board members] after the public hearing was closed. Barrie Munro said that technically, no. Stan Moody suggested to the chairman that he either table the application or open the Public Hearing. Glenn Farrell said that the board was in the middle to trying to make a decision on an application, and that nothing would be gained by tabling it. Peggy McGehee said that Steve Burns had previously spoken to Hope Jacobsen about the necessary Waiver Request, and they brought it to the meeting. Chairman Barrie Munro said he wanted to go forward and work on the motion to waive 7.6.1.

Glen MacWilliams said that he did not see the need to recuse himself. He did not feel he had had *ex parte* communication. Hope Jacobsen produced a memorandum written by Glen MacWilliams to Doreen McGillis of the York Land Trust. Glen MacWilliams read it aloud. It contained thoughts about the site layout and plans for the open space. The memo discussed the possibility of finding a better way for the Planning Board to communicate with the developer. After reading it, Glen MacWilliams asked what seemed *ex parte* about that. Steve Burns answered that the *ex parte* was in the communication with Doreen McGillis. Glen MacWilliams said that the circumstances caused him to recuse himself, and he left the table.

Motion Glenn Farrell made a motion to move the question. Tom Manzi seconded the motion, which passed, 4-0.

Vote The Chairman called for the board to vote to approve the waiver of 7.6.1. The motion passed, 3-1, with Glenn Farrell, Barrie Munro, and Tom Manzi voting for, and Richard Smith voting against.

There was a 10-minute break.

Question 2 from Barrie Munro's "Chair's Procedural Notes" was discussed. **The Board must determine whether or not Lot 11, as submitted, satisfies the Wetland Ordinances in Article 11. Note—ordinances cannot be waived.**

Steve Burns reviewed administrative details. Reviews by the Town Engineer and Police and Fire Chiefs had gone well. Technical comments on the drainage plan were being offered to Steve Haight. The permits from NRPA and DEP (stormwater) were pending and will be attained before the Mylars are signed. The driveway cannot go through the wetlands. The Findings of Fact have to be reviewed. The plan notes, including the standard ones about topsoil and blasting, have been submitted to the project engineer. The condo documents remain a tough issue, he said, but there are actually no major problems.

Barrie Munro asked what could be done to satisfy Article 11. Steve Haight said that the wetland at Lot 11 is manmade. It was a water hazard created as part of the golf course, making it different than a natural wetland. But, the driveway can be reconfigured. Glenn Farrell said that the building envelope has to be far enough away from the wetland so that construction equipment won't be on the wetland. He suggested a ten-foot construction buffer from the wetland. Barrie Munro said that none of the other lots pose a problem. Steve Burns said that Mike Cuomo will be conducting a soil survey and using the New Hampshire method.

Barrie Munro said that the overall language of the covenants has to be submitted for 18.10.1 and 18.10.2, the Findings of Fact. Steve Burns said that the Planning Board now requires the applicant to do the Finding of Fact. Barrie Munro went over the aspects of 18.10.2, points a) through k). He and the board members briefly commented on each item.

Motion Glenn Farrell moved that the board finds the plan consistent with Ordinance 18.10.2. Richard Smith seconded the motion, which passed, 4-0.

The no-cut zone in Lot 13, the meadow, and the dedicated farmland on Lot 14 were discussed with regard to how decisions about the homes will be made after Steve Wood has passed the leadership to another person. Steve Burns suggested there be two separate homeowners associations that can be combined, if practical. Glenn Farrell said that they should be able to separate again, if they want to. Homeowners should have the right to approve subsequent plans, if Steve Wood or his company leaves. Glenn Farrell added that Barrie Munro wanted a note that the screening will not be sacrificed.

Richard Smith brought up the subject of the dedicated farmland. He said he would like to see the land used only for farming, with someone different taking over the farm, if a current farmer lets it go. Attorney Hope Jacobsen read some of the low impact activities that could happen there, including light recreation. Attorney Peggy McGehee said that the board couldn't order someone to be a farmer, that it would be intrusive to insist that the property be constantly farmed. Glenn Farrell explained that Richard Smith was asking for a mechanism so that, if the land does not get farmed, the York Land Trust will get a different farmer in there to do it. Peggy McGehee agreed to it.

Barrie Munro brought up Item 2.7, septic, which said there would be no subsurface septic systems, other than the communal system. Barrie Munro asked that the garages be attached. He also said that any expansions of the homes should be consistent with the original design. Also, there would be limitations on home occupations, and no commercial vehicles with signs on the sides in residence. Accessory buildings are not to exceed 15 feet in height. It was decided that the period the farm could go dormant would be three years before action is taken to replace the farmer.

Steve Burns read the following conditions for the approval from notes he had taken during the meeting.

- 1) Reconfigure the development plan on Lot 11 with the driveway out of wetland and a 10-foot buffer from wetlands for the house
- 2) Incorporate the engineers' changes per Steve Haight's e-mail of 3/18/05 and Steve Broadstreet's letter of 3/24/05
- 3) Obtain State permits for stormwater and NRPA
- 4) Obtain department sign-offs from Police, Village Fire, Public Works (sign Mylar)
- 5) Obtain York Water District approval (sign Mylar)
- 6) Obtain LPI approval of septic system
- 7) Incorporate plan notes sent to the applicant today
- 8) Applicant Attorney and Town Planner to finalize the Findings of Fact
- 9) Applicant Attorney to work with Planner and Chair to
 - a) Remove civil recourse
 - b) Make 2 separate associations (Ph1 and Ph2) that can combine should they choose
 - c) Prepare a damage clause for the Phase 2 construction on Phase 1 roads
 - d) Homeowners' Association to become assigned if Declarant leaves
 - e) Remove the public function provisions for Lot 14
 - f) Dedicated farmland use only
 - g) York Land Trust may find farmer if use ceases for 3 years
 - h) Declr. 2.7 septic
 - i) All garages will be attached
 - j) Limit home occupations
 - k) 4.17 accessory buildings—maximum height, 15 foot to gable elevation.
- 10) YLT accepts the farm easement

Motion Glenn Farrell moved to approve the Final Plan conditionally with respect to the precedent conditions listed by Steve Burns.

In discussion, Tom Manzi said that he would like to vote “no,” because the phasing prevents him from understanding the best decision to be made, but he won’t, because the open space ordinance is not specific enough to require the second phase to be discussed.

Vote The motion passed, 4-0.

The meeting ended. It was 11:00.