

York Planning Board
Thursday, November 29, 2012, 7:00 P.M.
York Public Library

Call to Order, Determination of Presence of Quorum

Chairman Todd Frederick presided. A quorum was determined with five people voting: Chairman Todd Frederick, Vice Chairman Dave Woods, Board Secretary Lew Stowe, Torbert Macdonald, Jr., and Brud Weger. Dave Glazebrook was absent. Alternate Al Cotton, Jr. was present, but not voting. Christine Grimando, the Town Planner, represented staff. Community Development Director Steve Burns participated in the discussion. Patience Horton took Minutes.

Public Forum

Open to the public to address issues other than topics scheduled for a public hearing.

No one came forward to speak.

Public Input

No one came forward to speak

Minutes

Meetings of October 18 and November 8, 2012

The minutes of October 18, 2012 were reviewed and changes were requested.

- **Motion:** Dave Woods moved we approve the planning board minutes for Thursday October 18 as corrected. Torbert Macdonald seconded the motion. It passed 5-0.

The minutes of November 8, 2012 were reviewed and changes were requested.

- **Motion:** The chairman asked for a motion to approve the November 8 minutes of the planning board as amended. Torbert Macdonald said, "So moved," seconded by Brud Weger. There was no discussion. The motion.

Former board member Tom Prince has requested a correction to the approved August 9, 2012 Minutes. Procedurally, the board will review them and possibly amend them. They will be included on the December 13 agenda.

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Field Changes

Jo Ann Fryer of CLD Engineers represents the Nicole-Parlin neighborhood drainage improvements application and requested three field changes. There is an 8-foot pad of stone

fill within the drainage easement. The pad was originally approved for 12-feet long. Secondly, there is an existing 12” pipe shown to be relocated and tied into a catch basin. The existing pipe is in good condition, and the property owner has requested leaving the driveway undisturbed. Finally, a change was requested for additional intermediate drainage basins to allow for connection of sump pumps and foundation drains.

Motion: Dave Woods said, “I make a motion that we approve the field changes for Nicole Parlin neighborhood drainage improvements, CLD reference 10-0410, dated November 21, 2012. Torbert Macdonald seconded. No further discussion. Motion carried 5-0.

Motion: Brud Weger made the motion authorizing the Chair to sign the Findings of Fact. Dave Woods seconded. There was no further discussion. Motion passed, 5-0.

The board members took time from the meeting to sign the Mylar.

Comp Plan Amendment—Sea Level Rise Discussion with JT Lockman about Comp Plan amendment draft

John “J.T.” Lockman, with the Southern Regional Planning Commission, addressed the planning board. He has recently left the commission and formed a Sea Level Rise consultancy called Catalysis. Peter Slovinsky was with him. He is a marine geologist with the Maine Geologic Survey and with the Department of Agriculture, Conservation, and Forestry. They were hired to write an Inventory and Analysis chapter for the York Comp Plan. The chapter covers Town Goals and Town Actions, which are combined with State Goal #6. As well, the chapter lists the 14 sub-goals of a recommended program York should follow in the future to deal with sea level rise. It spans about 18 pages, opposed to the 1-¼ page of text in the current comp plan.

The term “freeboard” is not used in the new plan. The base floor has to be elevated at least one foot above the height of a 100-year flood in the cases of new buildings, destroyed and rebuilt buildings, or torn down and rebuilt buildings. The freeboard is the distance between the 100-year flood and the base of the elevated floor. Recommendations in 6.4.1 are for higher freeboard, so flood insurance rates in the community would go down. In that case, the National Flood Insurance program would allow banks to loan money for houses. Without flood plain management, people could only buy their homes with cash. A 3-foot freeboard would allow lower premiums than a 1-foot freeboard. It is too early to work with a freeboard number. It would be best to do it during the public hearing period, said J.T. Lockman.

Steve Burns said that right now we have a 2-foot above-flood elevation for policy. There are communities going to 3-feet. Our flood plain ordinance is the state model. The sea level rise of 1-foot by 2050 is the biggest thing to look at in the Comp Plan, said Peter Slovinsky. Rain is not a part of the definition of a sea rise study, but leaving the modeling of rain out of the study does not mean it is not a problem. Potential cost of a study of rain and sea level together would make it prohibitive at this time.

Steve said MS4-mandated hydrological modeling is a logical next step. The MS4 program has a long laundry list of plans, codes, programs, policies, and implementation steps. Additional staff will most likely have to be added. It will be a ballot item.

J.T Lockman said for every site, there are three choices of implementation: fortify, accommodate, or retreat. Accommodation might mean having everyone elevate their houses six or eight feet. In order to create a sustainable community, we want all the options we can use, accommodation, fortification, and occasional retreat. The strategies in the new comp plan chapter can be made over, if you want. The chapter is balanced as the middle of the road. Steve Burns said that J.T. is preparing a final draft and has met contract obligations. Christine, Brett, and Steve will put it in form to go before the voters. As a statutory responsibility, the Planning Board will have 2 public hearings. Steve said he likes the consistency of the sustainable concept. This will be workshopped through winter and spring.

Steve said MS4 mandates certain mapping. You have to assess every outfall and know where they are. You have to document maintenance. The same is true in the community rating system, which we are in for flood plain management. If you have a maintenance protocol with a map in it, flood insurance premiums can be lowered. We want to take MS4 and the community rating system and come up with a unified mapping system that is web-based and available to the public and the staff.

The New Hampshire Method of Wetland Assessment is a freshwater assessment. The New Hampshire Tidal Method looks for tidal obstructions. It says that all coastal wetlands are extremely valuable, and you need to fix them all. You have to figure out where you can do that most effectively or cheaply. Per 6.4.10, we have to figure out where the tidal obstructions are. The Comp Plan has to meet the state's coastal goals. The state coastal goal is to discourage new development in coastal areas where there are storms, flood, landslides, or sea rising. You want to make a sustainable community, whatever the cost. We should drift away from the "climate change piece" and deal in terms of sea level rise. The ocean is the impact.

Dave Woods asked what would happen to the freshwater table. J.T. said salt water would move further inland. You'll have saltwater intrusion. A lot of the infrastructure that was made to drain fresh water will be backed up unless it is retrofitted to actually stop the salt water from coming into the system. Salt-water intrusion into fresh water aquifers in the area would be a significant impact.

Al Cotton asked how property lines are going to shrink. J.T. said the town owns the beach at Short Sands. Peter Slovinsky said that Maine is a Low Water state. Property owners own down to low water, Mean Lower Low Water (MLLW), or 100 rods offshore, whichever is greater. Any land below low water is submerged land. Submerged land is technically held in the public trust for the People of Maine. If you put something over submerged land, like a float, you need a submerged land lease, and the State of

Maine has to rent it to you. Land that becomes underwater from your property goes into the public trust.

Follow-up from Joint Meeting with the Board of Selectmen

Christine Grimando said ADU, Green Enterprise at Route 1, and Cluster documents will be moved to the Board of Selectmen as early as possible. Lew Stowe said Board of Selectmen Chair Mary Andrews does not understand that the timeliness of Planning Board documents depends of the readiness of the applicant to provide information, sometimes 6 months, but sometimes Preliminary and Final happen on the same night. Steve Burns said Sohier Park improvements and the Short Sands Park bathhouse are poor examples for the Selectmen. They have no standards and the Planning Board has nothing to fall back on.

May 2013 Ordinance Amendments

Review draft materials as are available to date

1) Protecting the Stormwater Drainage System.

Brett Horr is working on a map system for MS4 and the CRS community rating system. Proactive management of the floodplain gives bonus points from the National Flood Insurance Program toward discounts for property owners.

2) Office Uses

The purpose of this amendment is to establish a standardized list of the principal office uses addressed by the Zoning Ordinance. This builds on amendments passed in November 2011, May 2012, and November 2012 to improve the format of the use regulations.

3) Enforcement Authority

Code Enforcement is obligated, when finding someone “thumbing his nose” at the Town, to warn with a violation. Selectmen cannot be brought in immediately. This amendment says you don’t have to wait before engaging the selectmen and bring out the big guns. Fines start when you have evidence of illegal activity starting. Verbal warnings have to be documented.

The Planning Board puts a huge amount of energy into generating approvals. If someone violates that approval, it should be considered a violation under zoning ordinance.

4) Site Plan Regulations

Steve Burns explained that the Board has statutory authority to adopt subdivision regulations, but not site plan regulations. Site Plan and Subdivision regulations have been a unified code. Non-residential standards need to get into an ordinance, and zoning is the place to do it. Article 6 is the ideal place for that. Torbert Macdonald and Lew Stowe formed a subcommittee to assist Steve Burns on this.

Steve said that this is a Home Rule State until you come to planning and zoning, and then you’re only allowed to do what the state authorizes you to do. With subdivision, you are

specifically authorized to adopt a subdivision regulation. There is no parallel to that in the statutes for site plan development. He has asked for an MMA legal opinion explaining if planning has the authority to adopt site plan regulations.

ADU

Torbert said he wrote the original ordinance, and it was rewritten when he left the Board of Selectmen. It was originally written for the growth area and as a means of increasing density without increasing footprint. They used to be called mother-in-law apartments, a rental that is okay for anyone outside the family, as well. We are up to about 3-dozen units now. Steve Burns suggesting looking at the original ADU amendment, as drafted by Torbert and Stan Wilson, and at the subsequent amendment versions.

Community-Based map system

Steve said the community-based map system is a national program by a software vender, and we are the first community in Maine to be in it. It is available through the national system.

He showed the urbanized area from the 2010 census. The map is about population and surface density. The urbanized pink area meets Kittery at a point on Route 1. Because we are in the urbanized area, we are part of MS4, the Municipal Separate Storm Sewer Systems, which is the clean water act. MS4 will take 3 or 4 pages of Comp Plan. The urbanized area gets us into the Kittery Area Comprehensive Transportation Study, KACTS. KACTS information should also go into the Comp Plan. York, Kittery, Eliot, Berwick, and South Berwick combine the five towns in that. That is for federal funding for state or local roads in the urbanized area.

2013 Ordinance Amendment List

Christine Grimando ran down the 2013 ordinance amendment list. We are looking at right-of-way standards for non-subdivision roads. This includes paper roads; refining industrial use definitions and standards (use categories); sign standards (article 16 of the zoning ordinance); implementation of the Green Enterprise Recreation Overlay District; Cluster subdivision standards; and Farm Overlay District Amendment. The York Village work that has been going on for a year and a half will be added to the discussion.

Mt. Agamenticus to the Sea

Torbert said Karen Young is the new policy coordinator at the Mt. Agamenticus to the Sea Coalition. She will come to a planning board workshop in January.

MMA opinion of Rescind of Approval

Torbert had asked Christine to ask the MMA if there are any circumstances under which it is legal for the planning board to rescind an approval. She did not get an answer. He suggested authorizing the chairman to request of the Board of Selectmen that we get a town attorney opinion about it. Todd Frederick asked that, if an applicant believes that

the planning board erred on their vote, is there an appeal window? Christine said the appeal window is 35 days.

Todd Frederick said that per 18.5.a, once an approval is final, it's final and can only be overturned on appeal.

Christine Grimando said there is another section in 18.a that says that, with outstanding conditional approvals beyond 60 days, the Board can revoke the approval without prejudice.

Lew said that if somebody provides faulty information, you have the right to revoke it because you made the decision with bad information. Another one is that if they have invested in it in any way, it would have to go to court for a decision. There is no investment on the roadway, said Lew.

Motion: Torbert Macdonald said, "Mr. Chairman, I move that we request the Town Planner to ask of MMA the following question: What, if any, are the conditions under which the planning board can revoke final approval? Part B: Failing to find a satisfactory answer from MMA, may the same question be put to the Town Attorney?" Brud Weger seconded the motion.

In discussion, Dave asked "approval of what"? Torbert said it doesn't matter; in section 18.5.a, it says all decisions under 18.5.a are final and can only be revoked on appeal. Lew said it's a good question, but said he doesn't like the timing.

Vote: 4-1 with Lew Stowe opposed.

Adjourn
10:30