

York Planning Board
Thursday, September 27, 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 four people voting: Todd Frederick, Torbert Macdonald, Jr., alternate Dave Glazebrook (who had been asked to vote as a full member), and Board Secretary Lew Stowe. Dave Woods and Tom Prince were absent. Christine Grimando, the Town Planner, was absent. Community Development Director Steve Burns represented staff. Patience Horton took Minutes.

Public Forum

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

See Public Hearing

Minutes

The September 13, 2012 minutes were reviewed and changes were requested.

Motion: Dave Glazebrook moved to approve the Planning Board minutes of September 13, 2012 as amended. Torbert Macdonald seconded the motion, which passed 4-0.

Field Changes

There were no field changes.

May 2013 Ordinance Amendments

Steve Burns said that the majority of amendments start at the Planning Board and go through the Selectmen. He has formed a list of ordinances for the May Referendum including a description and calendar. It will indicate workshop times for the boards separately and for joint meeting dates. The ADU amendment had a communication issue, and the selectmen ended up bouncing that back, per our requirement.

Todd Frederick requested a report showing approved applications that have not begun construction, like Yorke Field, and approvals that might have expired, like Walgreen's. Torbert Macdonald noted that the Kittery Town Counsel adopted cluster design for both residential and commercial as the preferred means of development. Kittery's Town Counsel has the ability to adopt ordinances. York's controls for cluster are in zoning.

Steve Burns said he leads ordinances for May, and Town Planner Christine Grimando leads for November. Business Licensing is the biggest amendment for May. Lew and Torbert volunteered to serve as Planning Board representatives for the May Use Amendments.

Presentation and Discussion—Staff Report about the Police Station & Connector Road Project; Report on Violations, September 27, 2012

Steve Burns gave a PowerPoint slide show called **Report on Violations**. He started with an area map of the Police Station and Connector Road project, land owned by the Town of York. The land and construction costs are estimated to be \$10.4 million. The Planning Board approval date for the Police Station was 4/19/2012. The Connector Road was approved 8/9/2012. The project was originally in one part and then was broken down into two parts. It has three vernal pools with 750-foot buffers. [Slide 9 of 45]

The Planning Board gave a charge to the Code Enforcement Office (Steve Burns) on August 23, 2012. The charge read “Per Title 30-A MRS §4406, [the Planning Board] requests the Code Enforcement Office to investigate and enjoin violations for the Site Plan and Subdivision Regulations and report back to the Planning Board regarding both phases.” [Slide 10 of 45]

Steve said it only takes one violation cited by a CEO to put a project on hold. Zoning §19.6.A states that once a citation is issued by the CEO, no permits or approvals shall be issued for that lot until the violation is resolved. Some resolution can be determined by the Planning Board, but the Planning Board can’t resolve State or Federal violations.

Steve Burns said that my research for the **Report on Violations** (a summary of which you are reading) was limited, but I did study the final versions of the plan sets, including the police station 6/26/2012 version of the 6/12/2012 plan set. Usually you have a 6/26/2012 version of the 6/26/2012 plan set, he said. In this case there were 2 different versions.

For the Connector Road, I studied the 7/20/2012 plan set. It is approved, but unsigned, and there are no Findings. Further describing the limits of his research for this report, Steve said he did not take any personal testimony-type input for figuring out the violations.

There are two types of violations, Procedural and Substantive.

As a Procedural Violation, the Connector Road Phase was cleared prior to final approval, per Site Plan and Subdivision Regs §5.1.5 and §11.2.5. Richard Smith came forward and made that clear. There could be argument that in interpreting the section, preliminary approval is sufficient, but I don’t believe that. We need to clarify that language. [Slide 20 of 45]

As Substantive Violations in the Connector Road Phase, stockpile areas cleared impacted all levels of permits. 10 of 12 stormwater buffers were cleared. The State is dependant of those stormwater buffers to take the water off the road and run them through undisturbed forest for water quality improvement. Stockpile areas cleared west of the Police Station destroyed vernal pool buffers required by the Army Corps of Engineer. Stockpile areas cleared destroyed Shoreland and Wetland Zoning, and altered the on-site

land use. East of the Blinn House, stockpile areas cleared destroyed the vernal pool buffers.

The Subdivision Question: Is this a subdivision? Yes. Subdivisions are created when 3 lots are created within 5 years. On May 28, 2010 the Town acquired part of the Horn lot and divided it into two lots, the Horn Lot and the Town Lot. Lot 1 and Lot 2. But when the Planning Board approved the plan on April 19, 2012, Sheet 1 of 2 and Sheet 2 of 2 of the BH2M Survey suddenly had Lot 3. Three lots came together in 2 years and 2 months. The subdivision was created without being noticed.

- Town Planner Christine Grimando's reviews between 8/4/11 and 4/12/12 showed Site Plan, not Subdivision jurisdiction.
- Plans the Board approved on 4/17/12 and signed on 7/5/12 were not subdivision plans.
- Findings of Fact signed by Lew Stowe on 7/5/12, showed no jurisdiction for a subdivision.
- The Planning Board voted to approve plans for the Police Station on 4/19/2012. Conditions on the approval had nothing to do with the creation of a third lot.
- Lot 3, first appeared on BH2M Sheet 2 of 2 that was printed on 6/11/2012 and was included the 6/12/12 plan set. That plan set had no revision date, and the plan set had the exact same title and date of preparation, even though there was an added lot. It wasn't flagged by a revision date.
- On the plan set of 6/12/12, Lot 3 showed on Sheet 2 of 2 only. It was not found on Sheet 1 of 2. On the next version, 6/26/12, Lot 3 showed up on both Sheet 1 of 2 and on Sheet 2 of 2 of the plan set.
- The 6/12/2012 plan set had a third lot showing on one sheet only, and it got through because of an inadequate revision dates and a lack of flagging. The plan sheets for 6/12/12 and 6/26/12 sets were inconsistent. That 6/26/2012 plan set was the one that was signed on 7/5/2012.
- The signed coversheet on the plan set that the Planning Board signed did not reflect any revision dates on the surveys. It still went back to November 2011 for both Sheet 1 of 2 and Sheet 2 of 2. The cover didn't reflect the 6/26/12 revision dates on those two survey sheets. There's a little problem there. I can't tell you how much pain and suffering that took to figure out. (Steve Burns)
- The 6/26/2012 plan sets signed by the Board, did have revision dates of 6/26/2012. BH2M finally put revision dates on as part of a series of changes they made, including the addition of the Wild Kingdom road where it dipped down into Town property and because they moved the signature block.
- But, those 6/12/2012 BH2M Survey Plans still had the title "Standard Boundary Survey Plan," and neither one of them said "Subdivision Plan." There was nothing that triggered anybody to look at that. It was an easy mistake to miss. It isn't called out on the front that it's a subdivision plan, not a boundary plan.
- The bottom left hand margin of a survey sheet shows the date and time the sheet was created printed from CAD or PDF. I had to crack these open to figure out when those things showed up, he said. Lot 3 showed up for the first time on any

survey on Sheet 2 of 2 printed 6/11/2012. Peeling back the margin is how we figured out when that lot first showed up. [Slides 33-36]

Furthermore, splitting the Police Station/Connector Road single property into two parts was a mistake. It was “a version control error.” You have one sheet that applies to the Police Station, and a different plan set for the Connector Road. Two different applications generate changes that apply to both sets. The sheets overlap from one project to the other. The plans for the Connector Road are no longer consistent with the Police Station. There are too many moving parts. The survey plan for the Police Station is different, yet they both cover the exact same area. The decision to split these things in two was the heart of the problem and the key mistake.

What are the project implications? Per 30-A MRS §4406(1)(C), there is no building permit for the Police Station because there is a subdivision that was not approved. No utilities can be installed for the Police Station Per 30-A MRS §4406(3), because there is no subdivision approval. These violations are “showstoppers.” The Planning Board has the responsibility to take formal action in remedying these violations. [Slide 38 of 45]

This project has been stressful. Public discourse has gotten more than mean. The residents of Ridge Road have been very patient, even though the problem is more in their direct lives than anyone else’s in town.

It’s a construction site, but it can be fixed. Wetlands have to be restored. Lot 3 has to be removed. There is a radio tower that isn’t on any other plans or permits. The Blinn House lot has to be addressed on the State permit. The subdivision has to be approved. Make this a single application. Make a substantive list. At staff level, we’ll hammer it out with the project engineer. Do you repeat prelim and final, or just final? If you think the basic configuration is right there and there are details that have to be fixed, I think you’re just reapproving the final and a single plan set for the final. The Planning Board has to put this through a new application process. It’s not going to be another amendment. With all the submittals from the applicant and all the reviews from the staff, everything has to go through transparently. Everyone has access to everything. Put it all out there on the web. This road should speak highly of the Town. One last thought. I’ll be nice if you guys will be. That was the end of the presentation. It took about 45 minutes.

Other Business

Public Hearing

Charles Stacy said he has a problem with where the road is coming out on US Route 1. The location of the new road is the most dangerous area you could put there. Todd Frederick explained that the board has established a signalized connection. Dave Glazebrook added that there is an effort to lower the Route 1 speed through that area.

Dave Emory asked Steve Burns who he was referring when he said, “they” during his talk. Steve said he was referring to the applicant or agents of the applicant.

Nancy Lambert is glad the communications tower parcel is not part of the problem. Per 2011 referendum, the wireless ordinance allows for an overlay district for a tower taller than 100'. The carrier would build it and give it to the Town to use and then rent space to co-locators. Steve Burns said the site has not been picked. The selectmen will make the decision about the design.

Kinley Gregg said she was opposed to the wireless ordinance because a wireless commercial carrier could co-locate with the Town and be exempted from the entire wireless ordinance.

The Chair closed the **Public Hearing**. Lew Stowe asked if there is any time estimate from SMRT about when they will be coming back to us. Steve Burns said he is not sure what's on the issues list and needs to sit down with Andrew Johnston. Todd Frederick requested an update from the planning office at every Planning Board meeting.

The Logging Road Subdivision

Steve Burns, Project Engineer Joe Cheever, Developer Duane Jellison, Dave Bridges, and Captain Lafont met on 9/17/2012 to look at the access. The single-road access is okay if built to Town standard. The fire chief said a 30,000-gallon cistern water supply placed where the road forks for the cul-de-sacs would be fine.

Ellis Short Sands Park Bathhouse Replacement

The current bathhouse was built in 1970. The new design is not confined to the existing footprint; it is subject to existing impervious. It can't get any closer to the ocean. They need more handicapped parking. Should this be treated as an amendment to an approved plan? Steve Burns said that as long as there is a violation at the police station, this application will have to wait. If the Planning Board finds the Town is in default, no new Town applications will be allowed. Torbert Macdonald said that technically, they can apply right now. The park is technically on Town land managed by Ellis Park Trustees. They are legal trustees looking over Town land. This would not be a Town project. Todd Frederick made a consensus among Board members. They agreed. This would be the first application under Green Enterprise design standards. Steve Burns said the trustees have a great proposal and a beautiful plan.

KACTS: The Kittery Area Comprehensive Transportation Study

This is a metropolitan planning organization that funnels all State and Federal transportation money into this region. Money we assumed came from MDOT or USDOT will be coming from KACTS. There will be local representation and periodic meetings.

MS-4 Designation: Municipal Separate Storm Sewer System

As of July 1, 2013, the Town has to have what is essentially a pollution permit for all its stormwater discharges. A lot of this water comes off the roads. There are aspects of it like maintaining the system and keeping up after water quality, too. Kittery, Eliot, South Berwick, and Berwick have a unified plan run by a single consultant. We don't have a plan. We might be able to pay for the consultant with KACTS money. There may be

funding available for us to do the study to get into the program. At this point we're waiting for somebody from DEP to come down to meet with us.

Keitts Point Findings of Fact

Lew Stowe said there has to be more detailed facts in the Keitts Point Findings than in the current one. The Findings are a legal document that someone could challenge. I want to show that we did due diligence on it. The process included the road, DEP approval, setbacks, the idea there is a wetland of special significance, stream impacts, and the fill of the land. After discussion, the Chairman extended the signing to October 11.

Motion: Lew Stowe made a motion on the Kearsarge Parking, Town of York Planning Board Findings of Fact Amendment, to approve the site plan for Kearsarge Parking, 4 Main Street; Tax Map 0023 Lot 0008. Dave Glazebrook seconded. No discussion. Passed 4-0

Motion: Lew Stowe moved for approval for the Findings of Fact for the Town of York Sohier Park, address, 11 Sohier Park Road; Tax Map 0029 Lot 0020. Dave Glazebrook seconded. No discussion. Passed 4-0

Motion: Lew Stowe moved that the Chairman write a letter to the Selectmen requesting that David Glazebrook be made a fulltime member. Torb Macdonald seconded. The motion passed, 3-0. (David Glazebrook abstained.)

Adjourn

9:08