

**York Planning Board
Thursday, February 10, 2011, 7:00 P.M.
York Public Library**

Chairman Lew Stowe called the meeting and declared the presence of a quorum. All the board members, Todd Frederick, Torbert Macdonald, Tom Manzi, Tom Prince, Lew Stowe, and David Woods were present. Tom Prince served as alternate and did not vote. Community Development Director Steve Burns presented the application for the Linscott Road Watershed Protection Permit. Christine Grimando represented Planning Department staff. Patience Horton took minutes. The meeting lasted 3 ½ hours and was televised.

Public Input

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

Helen Rollins came forward and expressed her disappointment with the Planners about serious water problems from 2003, when people's properties were damaged from water running into their property from fill brought in. A law was passed in Maine so water flow cannot be changed and impact neighbors' property, she said. There is always the possibility of having septic systems with pumps that are not powered during electric outages. She asked the Board to pay attention to the long-term impact of decisions concerning septic systems.

Lew Stowe said the board has to consider every project that is submitted. He asked the board members if there is any conflict of interest concerning the evening's activities, and there was not.

Field Changes

There were no field changes.

Minutes

Review and approve draft minutes

The board reviewed the Comp Plan workshop minutes recorded by Missy. Tom Manzi asked for a correction, and Tom Prince added "commercial" to clarify "prohibited use."

Motion: Dave Woods moved that we accept the Comp Plan minutes as corrected. Todd seconded the motion, which passed 5-0.

The Planning Board minutes of December 16, 2010 were reviewed and corrected.

Motion: Dave Woods moved that we accept the minutes of Thursday, December 16, as corrected. Tom Manzi seconded the motion, which passed 5-0.

Torbert Macdonald confirmed that the Planning Board had not voted in the Walter Woods matter, heard January 20, 2011. Since there was no vote, he said, the Charter allows the Planning Board members to represent themselves during the Appeals Board meeting, as long as they remove themselves from the Planning Board and state they are individuals. There is no Planning Board jurisdiction in this example, therefore the association is moot. Torbert Macdonald recommended that no one attend the Board of Appeals hearing. Lew Stowe said he would go and represent himself.

Application Reviews and Public Hearings

- **Watershed Protection Overlay District Conditional Use Permit for Linscott Rd., South: 29/32/33/34/36/37/38/49 Linscott Road. Rough. Map & Lots 0089-0014-U/0089-0012-Y/0089-0014-Y/0089-0012-V/0089-0012-X/0089-0014-X/0089-0012-W/0089-0021-E:** Application for a Watershed Protection Overlay District Conditional Use Permit for road construction

Town Planner Christine Grimando said the application for watershed protection is unusual because the work has been completed. The applicants were not directed to get the permit at the time. The application will determine that the construction does not have an adverse effect on the downstream. Dave Woods commented that the Town is in error.

In a memo, Steve Burn had written that there was no intent on the property owners, but it is their responsibility to comply with the requirements. Torbert Macdonald said they were misinformed about the requirements, Code Enforcement did not tell them about the requirements, and the board has reason to be sympathetic.

Steve Burns said that over a decade, the road has been improved from a walk-able road to a drivable road. It is within eyeshot of Bolter Pond, the water source for Kittery. It has been brought back because it is dealing with the standards to protect a drinking water supply.

Mike Livingston, Anderson Livingston Engineers, said he has photographed and documented the road. There has been no significant erosion. Road width steps down from 20 to 18 to 12 feet. Regular road maintenance should not affect conditions.

Todd Frederick said documentation should include overhead line poles and dust control. Mike Livingston said it is not an issue. Lew Stowe asked if the road is situated on property easements. Mike Livingston said it is an old road and was a town road.

Motion: Torbert Macdonald moved that we approve the conditional use permit for the road known as Linscott Road South incorporating the five recommendations of Mike Livingston as reported in his Memo dated February 11, 2011, which recommendations will be reported by Mr. Livingston and to be completed in two years. Todd Frederick seconded the motion. It passed 5-0

- **D. Anthony Foundation Replacement: 3 Overlook Way. Map & Lot 0024-0033**, Application for a foundation replacement and single-family residence replacement in the Shoreland Zone.

Christine Grimando said when someone wants to take down or do major foundation work in the Shoreland zone, there are numerous restrictions about expansion and the elements proving nonconformity. These are largely tiny lots on the beach. The focus is on improvement of the setback even a little bit.

Thane Pearson said the cottage is 40 feet above the water on a steep cliff. This replacement changes the setback by zero on one side and five feet on two sides. The deck is reduced to 75 feet. There is no volume expansion. The current foundation is being expanded beyond the water. Autos are parked in front of the building on grass and gravel. There is basement space.

The **public hearing** was opened and closed. No one came forward to speak.

Bill Anderson said the building is above the 19-foot flood level. The final deck design is included in the area. The existing floor areas are increased by 30% and the deck is included in the area of the final design. There is no need to scoot the building back from the water any more.

Motion: Dave Woods moved to approve the foundation replacement and expansion for D. Anthony Foundation Replacement, 3 Overlook Way, with gross square footage not to exceed 1,760 square feet, with a maximum volume of 19,268 cubic feet within a 100-foot setback. Todd Frederick seconded the motion. It passed 5-0.

- **Barrell's Grove 59 Beech Ridge Rd. Map & Lot 0086-0045-A** Continued Preliminary Review of a Major Subdivision Application

Christine Grimando said this is the third preliminary review. There are nine house lots. A controlled system is required for this application, also stated in Steve Burns's memo of February 10, 2010. She had spoken to the DEP about what there were covering regarding storm water. Jay Clement of the Corps of Engineers was looking at road layout. There is an issue of vernal pools.

Bill Anderson said that the applicant wishes to keep the individual septic systems. The homeowners association will take care of the fees that will pay for Oxypro to come. Soil scientists will check the filed. Dave Woods asked for clarification, and was told that if one fails, the soil scientist figure out which one, so the person who owns it pays the bill. Oxypro will come for maintenance, and the homeowners association will pay the bill.

The Chairman opened the **Public Hearing**.

Abutter **Linda Goulette** said it doesn't make sense to have nine pipes. That makes for nine chances for failure. The septic System is so close to the York River. Culverts flow under the road and into a tributary of the York River.

Richard Mirick had emailed the Town Planner. He said the Planning Board had failed to allow public access to the privatized Barrell's Grove space. The **Public Hearing** was closed.

Motion: Torbert Macdonald moved, due to the concerns expressed in CEO Ben McDougal's February 4 memo and with respect to the poor soil quality of the site, the extreme dimensional intolerance of the proposed septic design with the necessity for arbitrary sequencing of septic beds as lots are sold, the need to protect the York River from potential pollution, and the ambiguity of responsibility for operational maintenance, the Planning Board thereby mandates that the applicant present a design of an engineered, controlled septic system to serve the subdivision. The controlled system shall be installed by the developer with a maintenance contract by a reputable engineering firm contracted by the developer. Todd Frederick seconded the motion.

Christine Grimando said the Town had adopted the Supplemental Plumbing Ordinance in 2009. It determines that when there are more than three units, it is required to be a controlled system. Because of how this is configured, there will be requirements for eight systems.

Lew Stowe said the Sweet and Associates report relative to the plume does not say whether or not it will affect the York River. The soils report by Albert Frick talks about two basic types of soil. One analysis from the Frick report is that the water table is 1 ½ to 2 feet below the soil surface. Lew Stowe said that in his final conclusion, Sweet states the conditions but doesn't say whether or not it will affect the York River. The Albert Frick report talks about two basic types of soil. He does an analysis of recommendations and concludes that there is a problem in this area. Albert Frick writes that the material is the water table is 1 ½ to 2 feet below the soil surface.

Vote: Lew Stowe called for the vote. The motion passed 5-0.

Motion: Torbert Macdonald moved we send a letter to Community Development allowing that we view the adjacent septic system including its history, current status, design details, when the last failure was, what was the maintenance contract for the system, and when was that initiated. Tom Manzi seconded the motion, the motion passed 5-0.

Lew Stowe said that Sweets wrote there is no affluent from Barrell's Grove system into the river and would not be responsible for the neighbors. Bill Anderson said that with 50 houses going into common system with no pretreatment, Barrell's Grove should not be punished for their systems' problems.

Lew Stowe said there is a requirement that the houses be two feet above flood level. The ground water level for Lots 1, 2, 3, and 4 has not been studied. The Frick report calls for

special construction specifications for changing contour. Christine Grimando said that most of the lots will need special consideration to be built, but the special considerations are not known.

Motion: Dave Woods moved to see the ground water elevation on lots 1-4. Todd Frederick seconded the motion, which passed, 5-0

Christine Grimando said the applicant had not gotten the DEP application rolling.

Motion: Dave Woods moved they have to submit their application to DEP prior to acceptance of their plan for final review. Todd Frederick seconded the motion. The motion passed 5-0.

Christine Grimando asked if the vernal pool study should be done. Todd Frederick read from the Conservation Commission report by David Tibbitts referring to Frick and Associate's report that they had found one vernal pool on the side. The pool is under the jurisdiction of the Corps of Engineers. She had received an email from the Corps of Engineers about the road design. Lew Stowe directed Christine Grimando to do the research on those things. The cottontail has also been seen on the property.

Lew Stowe asked the board if the septic system should be part of the open space designated for scenery or habitat. Christine Grimando said there is nothing to indicate whether or not it meets section 17 about the suitability of the area. Torbert Macdonald left the meeting. Tom Prince voted in his place.

Motion: Dave Woods moved that we allow the applicant to use the leech field in their open space calculation. Todd Frederick seconded the motion, which passed 3-2. Tom Manzi and Lew Stowe were opposed.

Sight Distance: The Board discussed how cars coming out of the dip in the road might not been seen. Even with the dip, the calculations are good.

Motion: Dave Woods moved that the Planning Board deem that the sight distances are permissible based on the conclusion of the Police Department. Todd Frederick seconded the motion.

Friendly amendment: the words "Barrell's Grove Road," "Beech Ridge Road," and "Hill Road" will be added to the motion as appropriate. David Woods accepted the amendment.

Vote: The motion passed 5-0.

Drainage: Bill Anderson said it doesn't matter if ground water is up the basement wall, if you have a working drain and it gravity drains. He showed the foundation detail. Christine Grimando said the drainage report has to be submitted now, whether to go forward

with the decision about the basements for those lots or not. Bill Anderson explained the drainage patterns and said he is not trying to move draining to any other area.

Roadway: The applicant has purchased the entrance into the property. There is changed information about length and fill. The applicant is currently focused on septic design and depth of water table, which are aspects of the preliminary. Planning Office requires submittal of the drainage plan. The applicant asks for a waiver to move the drainage to Final. The landscape plan is part of the final.

New Business

York Village Committee Planning Board Member Appointment

Christine Grimando said the Selectmen have taken action to form a York Village Committee resembling the initiative of the York Beach Project. It will include representatives from the Planning Board, Board of Selectmen, York Hospital, Museums of Old York, York Merchants Association, and three residents.

Old Business

Other Business

Gables at Eastern Pint Amendment Findings of Fact and Mylar signing

- **Motion**: Dave Woods moved to approve the Tide Run Development, LLC, Findings of Fact dated February 3, 2011. Todd Frederick seconded the motion. It passed 5-0.

Bayberry Ridge Amendment Findings of Fact signing

- **Motion**: Dave Woods moved to approve the Findings of Fact in Walter Wood's Bayberry Ridge dated 2/3/11. Tom Manzi seconded the motion. It passed, 5-0.

The meeting ended at 10:30.