

York Planning Board
Thursday, January 10, 2008, 7:00 P.M.
York Public Library

Call to Order, Determination of Presence of Quorum

Chairman Glen MacWilliams began the three-and-a-half hour meeting at 7:00. He determined presence of a quorum. Beside Glen MacWilliams, Vice Chairman Tom Manzi, Barrie Munro, Dave Woods, Lew Stowe, and alternate Todd Frederick attended. Town Planner Christine Grimando represented Planning Department staff. Patience Horton took minutes. The meeting was televised.

Public Input

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

No one came forward to speak.

Field Changes

There were no field changes.

Minutes

The **December 20, 2007**, minutes were discussed. Glen MacWilliams and Lew Stowe enumerated typos and syntax errors that needed clarification. A passage from the Borkowski-Woodside Meadow application was possibly recorded incorrectly, and board secretary Barrie Munro was to review the tape recording of the hearing and determine if the passage should be changed.

No motion was made to approve the December 20, 2007 Minutes.

Application Reviews and Public Hearings

**Borkowski Off the end of Woodside Meadow Road Property located in Kittery
Application for subdivision in Kittery with sole access in York**

Applicant engineer Steve Haight said at the last meeting, the board asked about a traffic study that had been made. Town Planner Christine Grimando had distributed a January 7 memo to the planning board about mutual aid agreements. Those agreements were being worked out between the attorneys for the applicant and the Town of York. The agreement regarding waste pickup was in draft form and was close to finalization. CLD Engineering had conducted the traffic study. Its determination was that the five-lot subdivision would not have an impact on Woodside Meadow Road now or in the future. The process of transferring the deeds of the five-by-fifty foot strip is underway in draft form. The applicant is researching how other subdivision projects with the same situation of location in another town and access only through York received town approval through Article 9.3 of the Subdivision Regulations, citing the Meadows at Highland Farm and Clay Hill Farm for as comparison for private roads not maintained by the Town. A

note about road maintenance will be on the plan. He added that the applicant was looking for approval of the plan that evening.

The Chairman opened the **Public Hearing**. **Sandra Guay** represented the Tarboxes. In every subdivision, safe sight distances are required. She questioned this traffic study, because CLD Engineering, who conducted it, was selected and paid for by the applicant. She did not feel that in that circumstance, the town interest was being protected, per Article 9.3 of the Subdivision Regulations, and she specified work done to roadside ditches and the clearing of trees in terms of the town's request to the developer. There was no one else to speak, so the public hearing was closed.

Town Planner Christine Grimando summarized the issues of her January 7 memo. The mutual aid agreement had been sent to Town Attorney Durwood Parkinson, and he was working on its completion. The independent traffic study had arrived, and it indicated there was no cause for an adverse impact. The five-by-fifty foot easement would be removed from the plan, and there would be a revised plan.

Glen MacWilliams said the selectmen and the town planner would negotiate the agreements. The approval would be one with conditions precedent. The traffic study was intended to be nothing more than an assessment. Tom Manzi asked if the department of public works services roads that are no longer functional. Barrie Munro said the traffic engineer was supposed to tell the board what the impact would be. He asked for appropriate certification. Dave Woods said the board did not ask for specifications, and an assessment was done. The difference between an assessment and a full traffic study is established in Article 15(a)3(b). Glen MacWilliams asked about certification by a qualified American Institute of Professional Engineers. Applicant engineer Steve Haight said Paul Konieczka of CLD Engineers had done hundreds of traffic assessments, and one of the engineers in his office can stamp it. The CLD letter of January 2, 2008, reporting its assessment suggested the length of the Woodside Meadow Road is part of the determination regarding the impact. Barrie Munro said the findings of the impact of five more units and its additional impact of the 49 vehicle trips to Woodside Meadow Road could go into the ordinances with regard to how it is perceived or assessed to be at this time. If it is a "C" classification and continues to be so, he said he would accept it.

Sight distance was discussed. Tom Manzi commented on the dangers of backing out onto a road. Glen MacWilliams read the Ordinance 15(a)5, that site distances shall be given in all driveways. Dave Woods commented that the applicant had been given misguided direction, and Barrie Munro commented that the application was being dragged out interminably. Tom Manzi said that the traffic assessment was in response to concerns of traffic safety during public hearings. Steve Haight said he had talked about the scope of traffic easements in three ways, and asked when a traffic study is warranted. About this, he referred to and read from planning board minutes from an earlier meeting. He had gotten written assessments from the department of public work and an independent engineer. Both responded that the five lots would not impact the capacity of the road.

Sandra Guay said Article 15.1.2 article allows the Town to get a traffic assessment at cost of the developer. She asked the board to look at the ordinance and see what is required. Her client, the Tarboxes care about the sight distance and safety. Glen MacWilliams said that the board only asked for half of what it should have asked for by not considering the impacts of safety. He asked if the board wants to ask for more?

Lew Stowe said the subdivision is like an island of five units. Nearby, there is land for another 40 units that are land locked. If developed, what would the impact then be? The traffic study says there would be a 7% increase in the impact. It should be on the record that the planning board is knowledgeable about how the road is used. The five-lot subdivision is listed on Norton Road in Kittery. We can approve this one, but the next ones are going to come. In 1972 and 1982, York took a stance that traffic was an issue.

Barrie Munro said that the planning board has to be narrowly focused with an application review. If one of the owners says he wants to use these roads, he has to prove it is not a problem. The board wanted to be shown that 49 units on top of the traffic load would not change the assessed capability of the road to handle the volume. Steve Haight replied that if, the board wants a traffic study showing the carrying capacity of the road, it is on a level much bigger and higher. Glen MacWilliams asked for a poll responding to the board's request with regard to a study with added questions about the requirement for professional certification, possibly submitted in letterform. He asked the board if the board asked for what was truly needed.

Barrie Munro said that evening was the drop-dead date for the application, unless there were an agreement between the board and the applicant to extend it. Glen MacWilliams asked again if the board wished for additional information. Dave Woods replied that the board received what it had asked for, and Barrie Munro agreed with him. The board should be fair to the applicant.

Motion Dave Woods moved to accept the transportation assessment as provided and as requested. Barrie Munro seconded the motion.

In discussion, Tom Manzi said the intersection had the potential for becoming very large, which is an issue that might come up later. At the present, the board is reviewing traffic flow. Dave Woods said the expanded use should be reviewed. Someone will secure a right-of-way, if the larger land becomes available for subdivision. Glen MacWilliams suggested narrowing the focus on the present subdivision. Lew Stowe suggested making the cul-de-sac a straight road, which would be logical from a safety point of view. Dave Woods added that it is illegal in Maine to back out into a public way.

A friendly amendment was made to replace the words "traffic study" with the words "traffic opinion." Dave Woods accepted.

Amended Motion Dave Woods moved to accept the traffic opinion letter, as provided, as what was requested. Barrie Munro seconded the motion.

Vote The motion passed, 4-1, with Glen MacWilliams opposed.

Steve Haight said that with the deed elevation from the new version of the plan, the plan would have the location of the roadway shown on the subdivision plan and the design plan. Lew Stowe said the plan would be better in that it shows the right-of-way abutting the properties.

Tom Manzi read a motion from the December 20, 2007, York Planning board minutes. It had passed with a mixed vote of 3-2.

Motion from the minutes of the 12/20/07 meeting Tom Manzi moved that, if the new cul-de-sac turns out to be a town road, then to make the additional improvement to the existing public street, the applicant must obtain public town approval in accordance with 9.3. Lew Stowe seconded the motion.

After reading that motion, Tom Manzi made a motion.

Motion Tom Manzi moved that an applicant making any improvement to an existing public street, including an extension to a public street, must obtain public Town approval in accordance the Article 9.3 of the Subdivision Regulations. Lew Stowe seconded the motion.

Vote The motion passed, 3-2, with Glen MacWilliams, Tom Manzi, and Lew Stowe in favor, and Barrie Munro and Dave Woods against.

Barrie Munro said the December 20, 2007, minutes show the board went through and approved all of the criteria of approval. There are other conditions precedent. The mutual aid agreements have to be worked out and approved by the Selectmen and the Town. The easement showing the extent of the right-of-way must be approved. Article 9.3 of the Subdivision Regulations must be met, and a town vote of approval is required. Christine Grimando added department heads must be included. The ownership is understood. Kittery verified the financial letter has been filed. Steve Haight added Steve Blaisdell owns the right-of-way, and not the lots.

Glen MacWilliams said based on the outstanding conditions that have not been met, the planning board could not go forward. Article 9.3 is "the big one." Catherine O'Connor said the emergency services document that had been developed by Durwood Parkinson and her has not finished review by Durwood Parkinson. She can come back to the board with that document, when finished. She read a letter she had written explaining that Article 9.3 of the Subdivision Regulations is not clear and does not adequately guide the applicants. It appears to require the applicant to build a road and then go to a town meeting asking or approval of the road after the applicant has spent the money. If not approved, in this case, for example, the applicant is stuck with a driveway off a cul-de-sac. She read many issues she has with Article 9.3, which she read from her letter. The letter was later given to the town planner for distribution.

Glen MacWilliams said the public hearing had not been opened. Catherine O'Connor replied that, with the matter, the board should engage, even though the hearing was not open. Glen MacWilliams polled the board to accept opening the public hearing. They all agreed.

Catherine O'Connor said Article 9.3 requires the developer to build the road at its own expense, and HDV Enterprises will then take over its maintenance. But if Article 9.3 is applied, the requirement will be subject to every driveway, utility poles, and sewer connections in York. Never before has the York Planning Board or the Town invoked Article 9.3 of the Subdivision Regulations, wherein the applicant cannot get approval until it is completed, putting the developer in a very difficult position. If not accepted, the town is left with driveways and utilities to nowhere, all at the expense of the developer. Preliminary approval, preliminary and final plan approval are the three stages of the proposal, she said. The new stage that is being created is inconsistent with State law. The planning Board has no jurisdiction over this. It would violate HDV's protection rights.

Sandra Guay asked for access to the specially opened public hearing, saying that the cul-de-sac being created is not a driveway. It is part of a public road. The planned cul-de-sac is not as it was on the original plan, with the 11-foot of edging going to 13-feet. The approval for that section has to be approved, because it is within the right-of-way. Sandra Guay added that if the new road cannot meet approval, where does that leave the developer?

Glen MacWilliams answered that that is the decision the board has made, but it may be an open question for the board. It can be upheld or waived. The board chose not to waive it. Dave Woods said with this decision of applying an interpretation 9.3 to this applicant, the planning board is making this applicant accountable for something we need more looking into. Glen MacWilliams replied that the board has to make more decisions. We had the opportunity to waive or uphold. The applicant can make progress by bringing information to the board. Barrie Munro added it would be in the best interest.

Motion Barrie Munro moved to deny the application and allow the applicant to take the matter to the Board of Appeals.

There was no second to the motion. Barrie Munro withdrew the motion, saying there were missing elements in Article 9.3, which would prevent this application from ever coming to fruition.

Motion Barrie Munro moved to approve this application with the following precedent conditions as enumerated by the town planner. The town planner enumerated the precedent conditions of approval, including the approval of the Memorandums of Understanding, of which there are three: trash pick-up services, police, and fire; approval of the details of the deeds, 9.3; the revision of the plan and; signatures of department heads. The motion was seconded by Lew Stowe. The motion was approved, 3-2, with

Glen MacWilliams and Lew Stowe opposed, and Barrie Munro, Dave Woods, and Tom Manzi in favor.

Highland Farm Phase 2. 1 North Meadow Lane, and 250 Cider Hill Road. Map & Lot 0090-0029-A and 0090-0030. Continued consideration of preliminary review of a major subdivision.

Chairman Glen MacWilliams said a letter had been received asking to postpone the application for one month. Postponement with a time consideration until the February 4 planning Board meeting would be appropriate.

Motion Barrie Munro moved to postpone the Highland Farm application until February 14. Tom Manzi seconded the motion, which passed, 5-0.

Ledges Golf Course

Pat Rocheleau, president of Ledges Golf Course, said he was seeking expansion of the golf course house. Originally, he had brought in a proposal to build the clubhouse, and had built a small building with the approval of Code Enforcement. That clubhouse had been approved for a kitchen, which was not built. Currently the clubhouse has a bar with a sandwich unit, and he calls in a caterer for tournaments. Because of the coolness of the fall and spring, he wants to get golfers inside, because he currently uses a tent to accommodate them. The board reviewed a survey, and Christine Grimando handed around a single copy of the most recent plans. Glen MacWilliams asked for a revised site plan with title blocks and a certified architectural plan. The hearing ended.

Smith Division Christine Grimando said the applicant wished to continue the application until February, because it was not ready to proceed.

Josiah Woods

Dana Libby gave a PowerPoint presentation featuring a large unfragmented block comprised of the Bridgeton Realty Trust, the York Land Trust (150 acres), and 79 acres owed by George Danis of the Josiah Woods subdivision. The Josiah Danis block has 340 feet of frontage along Josiah Road accessed by the Ogunquit Road and the Josiah Norton Road. Once developed, the remaining open space of 43 acres remaining would be donated to a land trust. Those 43 acres contain forested areas with vernal pools, some of which are significant. As well, a trail system runs through the property. In the proposed section for building lots, tree cutting would be minimal. The subdivision at Josiah Woods would have 24 lots each of 40,000 to 56,000 square feet, organized as cluster design. An approaching boulevard road with two one-way roads would have a 34-foot wide green belt between them. The wetland impact would be minimal.

Glen MacWilliams opened and closed the Public Hearing. No one came forward to speak. He commented that a sketch plan had been presented before, since then, changes had been made. Dana Libby said the lots would interrupt the trail system, but the path will be rerouted. Glen MacWilliams discussed with Dana Libby that the planned usage was very good use of the site. A habitat study was discussed. A map was reviewed. It

gave a general ideal of the wetland location, and open spaces were identified. Dave Woods explained that due to the snow moving equipment, 16 feet of room is necessary for snow storage. John Hutchins pointed out other information on the map. One area of the land located in the wetlands area had already been cut. Barrie Munro asked if the median strip on the boulevard has to be denuded. Dave Woods was also concerned about the center islands, asking if it would be manicured or keep natural looking. Dana Libby said the applicant hopes to replace the vegetation on the center strip with natural products. Barrie Munro asked if there would be a setback from the vernal pools. Dana Libby answered that the DEP will be involved in the project. Todd Frederick saw a list of seven vernal pools on the handout, but on the aerial map could find only five. He was told they were off-site. Lew Stowe asked how the homes would be built, and Wes Cook said they would have a common design like Whippoowill does with capes and colonials. Tom Manzi asked about the elevation and Dana Libby showed the board the points of elevation across the property.

There was discussion about the actual amount of net-buildable land. Christine Grimando said there were two different calculations. The amount of necessary cutting was unclear. Currently the land is used for hunting, birding, snowmobile, and other common uses. When the existing trails are reworked, they will most likely run through the buffer strips. Dave Woods asked if the road would remain a private road. The answer was yes. Dave Woods asked the board if the property would be held to Article 9.3 of the Subdivision Regulations. Glen MacWilliams asked the board if 9.3 should be waived. Glen MacWilliams suggested a site walk. Tom Manzi laughed it could be done on snowshoes. Barrie Munro suggested April, but March is nice, also. Tom Manzi stressed the importance of interconnectivity for other parcels and wildlife. Barrie Munro briefly brought up the possibility of creating a conventional subdivision, rather than cluster. Lew Stowe pointed out a section of the block being in the shoreland overlay. Christine Grimando said there is a little shoreland. The potential for 4300 square feet of fill was discussed. Beyond that, a permit and review from DEP would be necessary. Christine Grimando said that open space design might also cause DEP review. The open space should be designed with the easement holder in consideration. In the revisiting of the application, Christine Grimando said there would be work sessions with the planning board for gathering input.

In Other business

- The Findings of Fact and Mylars for the Baxter Martin Lot Line Revision were signed.
- The Planning Board and Board of Selectmen will meet together on February 19, 2008.
- January 24, 2008, is the date of the York Beach Village Center hearing. A few items are missing, including proper pagination, said Christine Grimando, but nothing has to be changed substantially.

The meeting ended at 10:30.