

TOWN OF YORK PLANNING BOARD  
THURSDAY, NOVEMBER 18, 2004, 7:00 PM  
YORK PUBLIC LIBRARY

The meeting was held in the library's small conference room across from the usual meeting hall. It was not televised, and there was no backup recording equipment. Chairman Barrie Munro began the meeting at 7:00. Everyone attended: Barrie Munro, Glenn Farrell, Richard Smith, Glen MacWilliams, and alternates Tom Manzi and Lee Corbin (Dave Marshall had resigned from the Board earlier in the month). Town Planner Steve Burns was there. Patience Horton took Minutes. The Board voted on 2 motions.

Barrie Munro asked Lee Corbin to vote in place of Dave Marshall.

### **Public Input**

Greg Tsairis of the TAGT lobster pound application, 360 US Route 1, said that he was there to make a third request for changing outdoor light fixtures at his new building. He had first written a letter, and the request was denied. He had then sent specs and pictures, and it was denied again. He described his \$2 million project and his compliance with the Board's request for no metal roof or siding, no fake bricks, plus \$40 thousand in apparently redundant landscaping on the back property line. He was asking for a plan change involving 3 light fixtures attached to the building. Barrie Munro said that with changes to approved plans, the Board wants to compare the new proposal with what was originally submitted. Glenn Farrell asked if they were ground lights that were being moved to the building. The answer was yes. Barrie Munro said there was a misunderstanding about landscaping lights being changed. Lee Corbin asked if the proposed lighting might shine into the public's eye. The answer was no.

**Motion** Glen MacWilliams moved to accept the changes to the lobster pound, as shown by the applicant. Glenn Farrell seconded the motion, which passed, 5-0.

Greg Tsairis said that there should be a better way to address changes such as this one. It took a month to accomplish. It was a minor issue. Glenn Farrell said that the Planning Board is working on solving such things in a better way.

### **Business**

**Meeting with Ryan Hada. Mr. Hada is the Interim Town Manager and asked for the opportunity to meet with the Board to introduce himself and open the lines of communication.**

Ryan Hada introduced himself by offering support and assistance to the Planning Board. Barrie Munro said that he especially wanted to open communication with the Interim Town Manager over the issue of the Board of Selectmen's lack of response to the Planning Board's 2004-2005 Agenda, which possibly hinders the Planning Board's opportu-

nity to take fullest advantage of the opportunity for managing future growth. Glen MacWilliams said that the communication between the two Boards is very good during the joint sessions, but as far as the work agenda is concerned, it is very hard to get feedback and affirmation. Ryan Hada commented that the Selectmen had difficulty taking a firm position on some items at some of their meetings he had attended. Barrie Munro elaborated on Planning Board successes, including the 9 items on the November 2004 warrant that sailed through, as well as the Planning Department Monthly Report, which details a remarkable amount of work that gets done. He touched upon current items of concentration including compliance with the 1999 Comp Plan and the updating of the Inventory & Analysis. But, Barrie Munro continued, there is no getting direction from the Board of Selectmen. Tom Manzi suggested that it is as if the Selectmen are reluctant to delegate tasks and accept responsibility. Town Planner Steve Burns said that the Planning Board List of Priorities had gone to the Selectmen in August, and the Selectmen did not respond. Barrie Munro had told Steve Burns that the Selectmen should be expected to respond during the joint workshop in December.

**Boardsmanship. Lee Corbin will give us a refresher on important topics for all board members.**

According to Lee Corbin's handout, "Ten Rules for Serving on a Municipal Board," by Durward W. Parkinson, of Kennebunk, ten basic rules provide good guidance for Board members.

- Act like a judge, but don't get caught up with the power.
- Know and follow the law.
- Respect the due process rights of all parties.
- Keep all meetings open to the public except legal executive sessions.
- Do no engage in "ex parte" contact with parties.
- Step aside when you have a conflict of interest.
- Stick with the agenda.
- Develop a site walk procedure.
- Keep good minutes and protect the record.
- Issue detailed findings of fact and conclusions.
- One Final rule: Use your common sense!

As Lee Corbin went over and detailed the items, some items led to more conversation than others. She explained that Item 3, Due Process, includes utilizing executive session strictly for discussion, not decision, not vote taking. It also means that in the event a Board member must recuse him- or herself, the reason for the conflict must be disclosed. As well, there cannot be ex parte contact with applicant parties or abutters outside of meetings, and that includes during site visits. It is okay to talk about other things, but not about the application, and not about conclusionary opinions. Glen MacWilliams asked about making visiting sites by himself. Lee Corbin answered that that is discouraged, because it is not a public event. Glenn Farrell said that it is better to go on your own,

than not to go at all. Lee Corbin answered that the critical part is not to communicate with the owner and the abutters.

Item 8, Keeping Good Minutes and Protecting the Record, means that Minutes have to be good, in case the record needs to be pulled up and examined for any reason. The conversation flowed to Board member safety. Tom Manzi described a friend on another town's planning board who has been threatened with graffiti written near his property and car windows smashed, because an application didn't get passed. Glenn Farrell alluded to a time, several years ago, when a disgruntled applicant somehow "threw" Barrie Munro, causing a York Police Officer in regular clothes to attend a Planning Board meeting for safety's sake. Steve Burns said there is a workplace violence policy, but, unfortunately, it is only in effect in the workplace buildings. Glenn Farrell said that a board member could be sued based on a decision. Barrie Munro said that former Town Manager Mark Green had told him that the Town would defend him in court, if need arose. Tom Manzi said that several years ago, when he was running for public office, and he had an unlisted telephone, his parents were getting strange calls intended for him. Glen MacWilliams summed up the situation, saying that the members are not liable for decisions but subject to the consequences. Richard Smith said that if a board member is sued, it might be by someone who knows he or she cannot win, but knows that the defense will the board member cost a lot of money.

The 10<sup>th</sup> rule for serving on a Municipal Board, Issue Detailed Findings of Fact and Conclusions, involves what Barrie Munro called a pattern of formality. Lee Corbin said that if a decision is challenged in court, it is important to have good records that can be substantiated point-by-point, so that the Court can see how things evolved. When the Planning Board looks at an ordinance or section of an ordinance, and the abutter disagrees with what the Planning Board is doing, those ordinances and issues have to be itemized in the Findings of Fact. Also, when the Board says it is going to approve something, it has to articulate the reasons that it is going to be approved. Glen MacWilliams suggested having the Findings of Fact done by the applicant. Steve Burns said that the Site Plan Subdivision rules asks for that, and referred to the current Sparhawk Findings, prepared by Bill Anderson, as being less than perfect.

**Ordinance Amendments. Discussion of work completed to date on amendments to be proposed in November 2005.**

Twelve issues were listed for this discussion.

- Rural Zones
- Home Occupations
- Cluster Subdivisions
- Resource Protection Shoreland Changes
- Route One Design Standards
- Impose Net Buildable Standards Everywhere
- Regulate Creation of ROWs

- Increase Buffers for Elderly Congregate Housing
- Commercial Shoreland in York Beach
- Structure Expansion Limits in Shoreland Overlay
- Alter Regulation of Condominium Conversions
- Traffic Impact Mitigation on Town Roads

Not all issues were discussed. The 7<sup>th</sup> item, Regulate Creation of ROWs, came first. Town Planner Steve Burns said that due to State legislation, about two-thirds of the lots created are done so outside of the Planning Board's auspices. By controlling road right-of-ways, however, as this amendment proposes, the Planning Board can catch certain problems. After all, over the long course of time, in a hundred years or more, the road network will not change very much, but the buildings will. The Board discussed regulation of 3-, as opposed to 5-, lot subdivisions. Lee Corbin made suggestions about changing the wording of "street right-of-ways" to just plain "right-of-ways."

In the 8<sup>th</sup> item, Elderly Housing, the amendment would increase the buffer for 4-house cluster settings, allowing more area for lawn or equipment usage. In Item 9, Overlay in York Beach, Steve Burns showed a map of the Beach area, pointing out the commercial zone, and explaining that it should become a mixed-use zone. Barrie Munro said that changing the use should encourage economical vitality. For Item 10, Structure Expansion Limits in Shoreland Overlay, the Board discussed calculation of volume. Item 11, Alter Regulation of Condominium Conversions, concerned compliance with building and plumbing codes, for which standards cannot be reduced. For Item 12, Traffic Impact Mitigation on Town Roads, it was understood that the Selectmen should sign off on road changes.

Going back to the top of the Ordinance Amendments list, Items 1 and 2, Rural Zones and Home Occupations, Steve Burns said that if the zone changes go forward individually through the vote, but some zone changes do not go through at all, home occupations have to go through regardless of how the zones do. He showed a chart of zones and classes. Richard Smith commented that currently there is only one class of home occupation, and it is available only to licensed professionals like lawyers, and architects--and hairdressers, Steve Burns added. Steve Burns said that there is also an issue around weekly home rentals, whereby rental companies should be regulated, not the individual owners.

## **Other Business/Adjourn**

Barrie Munro said he had asked Stan Wilson (Board of Selectmen) to schedule the quarterly joint work session for the Planning Board and Selectmen so the Selectmen can specifically follow up on the Planning Board's work plan for 2004/2005. That date had not been set.

In other business, Steve Burns said he had written Dave Tibbetts of the York Conservation Commission and Carol Donnelly of the York River group to help with the Natural Resource chapter of the Inventory & Analysis. Carol Donnelly had suggested going to

the greater Piscataqua Charitable Foundation for possible financial help. Steve Burns had also gotten the Harbor Master to agree to help with Marine Resources chapter of the Inventory & Analysis.

In other business, Steve Burns Handed out Sparhawk plans by Bill Anderson. They had been alluded to earlier in the meeting as being of less than standard quality.

In other business, Steve Burns also handed out the opinion by James N. Katsiaficas, Senior Staff Attorney of the Main Municipal Association, responding to Glenn Farrell and Steve Burns's questions about non-conforming structures. The MAA opinion leans toward the ultimate disallowance of the expansion of non-conforming structures. Glen MacWilliams said that the State does not agree with York's intent of non-conformity. Steve Burns said that the State wants non-conformity to go away. Glenn Farrell said that in that case, the Comp Plan would have to be changed. Glen MacWilliams said that because of the different interpretations in the issue of expansion, the Board should go further and get another legal opinion.

**Motion** Glen MacWilliams moved to get a second opinion on non-conformity from the Town Attorney. Richard Smith seconded the motion, which passed 5-0.

In other business, Glenn Farrell said that he would like to see that there is a little party held for Dave Marshall, just as there had been for long-time Board member Al Bibb's retirement.

The meeting ended at 9:45.