

TOWN OF YORK PLANNING BOARD
THURSDAY, DECEMBER 9, 2004, 7:00 PM
YORK PUBLIC LIBRARY

Chairman Barrie Munro began the meeting at 7:10. In attendance were Barrie Munro, Glenn Farrell, Richard Smith, Glen MacWilliams, and alternate Tom Manzi, who voted in place of Dave Marshall, who had retired from the Board. Lee Corbin was absent. Town Planner Steve Burns represented staff. Patience Horton took Minutes. The meeting was televised. There were four motions.

Public Input Open to the public to address any issue other than issues scheduled for public hearings on this agenda.

No one came forward to speak at that time.

Minutes Review and approve of draft minutes

Chairman Barrie Munro asked if there were any corrections to the November 4, 2004, Minutes. There were none. Barrie Munro then stated that the November 4, 2004, Minutes would stand as submitted and were therefore approved.

He asked if there were any corrections to the November 18, 2004, Minutes. There were no corrections. Barrie Munro stated that the November 18, 2004, Minutes would stand as submitted were therefore approved.

Eldredge Real Estate Corporation/Eldredge Lumber 627 U.S. Routes 1. Map 91/Lots 8S & 8Z. Public Hearing. Application for minor amendment of the approved Route One Use Permit. The applicant proposes to expand the office space on the northern end of the building.

Dan Remick presented elevations on behalf of Eldredge Lumber. He explained that the project had previously been approved for a 24 X 44 foot office on the north side. But a 24 X 70 foot office was now needed. He also sought approval to have the former restaurant area changed into a garden center.

Motion Glenn Farrell moved to open the Public Hearing, which Glen MacWilliams seconded. There was no vote on the motion.

Glenn Farrell suggested that since he buys a lot of things at Eldredge Lumber, he might have a conflict of interest, but he didn't really think so. "We all have that conflict," said Glen MacWilliams.

The Chairman opened the Public Hearing. Steve Burns had received an e-mail from Mr. and Mrs. George Dervishian expressing their unhappiness over the amount of truck traffic on Donica Road, which they suggested could be alleviated with screening or buffer-

ing. Steve Burns said that the Board had to decide if the change in office size relates to the Dervishians' concerns about the traffic on Donica Road.

The Public Hearing was closed. Applicant Dan Remick said that Eldridge Lumber is a good neighbor, and if there is anything the company can do to work out the problem with the Dervishians, it will. Glen MacWilliams asked if the Dervishians had been properly notified of the prior hearings that involved traffic. He added that if the Board is asking the Applicant to now make an agreement with the abutter, it should be made during a meeting. Tom Manzi pointed out that the proposed office size change would have not increased impact on traffic. Barrie Munro said that traffic was discussed and approved when the application originally came through. Town Planner Steve Burns said that the Dervishians received 3 different notices, and that a good deal of time has gone one since the approval. Barrie Munro pointed out that there are more houses abutting Eldredge Lumber than before. The business has changed and expanded, and so has the traffic.

Motion Glenn Farrell moved to approve the applicant's request, including the change in the Route 1 use permit and the change from restaurant space to garden center. Glen MacWilliams seconded the motion, which passed, 5-0.

Cape Neddick Village. 1132, 1136 & 1244 U.S. Route One. Map 22/Lots 13A and 13C, and part of the Map 97/Lot 5. Public Hearing. Continuation of application for a Route One Use Permit to construct 22,000 square feet of commercial space, plus apartments.

Applicant Seth Spiller handed out an addendum addressing loose ends left over from the last meeting, including information about plan notes, the ME DEP permit, and FEMA's acknowledgment receipt. He said that he has hired Coastal Architects for the building designs. He has made an agreement with his abutter to make a particular triangular piece of land into buffer. However, because the jurisdiction of the septic system had not yet been determined, the design had not been made, and because denial of the septic system could be a possibility, Town Planner Steve Burns suggested putting off further business until that jurisdiction is determined.

Chairman Barrie Munro opened and closed the Public Hearing. No one came forward.

Motion Glenn Farrell moved to approve the waiver on §6.3.9 because the easement had been secured with the buffer on the neighbor's property. The motion passed, 5-0.

The Chairman tabled the application until the January, 2005 meeting. He asked if there was a need to blast for underground electric. Seth Spiller said that he was not yet sure.

York Water District/Omnipoint. 5,7, & 9 Roots Rock Road. Map 115/Lots 67, 69 & 71. Public Hearing. Application for a new wireless communications facility to be located adjacent to the existing water storage tank.

Around thirty-five or forty townspeople attended this hearing as a live audience.

Barrie Munro said that the application was the second Wireless Communication Facility (WCF) application to be based on the Town's new ordinance. He encouraged the public to become well informed and participate in the matter.

Bill McQuade said he was speaking on behalf of Tower Ventures, Omnipoint, the York Water District, and Nextel. He introduced Attorney John Springer and the engineer from Nextel. The leased area measures 10,000 sq. ft. lease area, he said. The proposed structure will be a 4-carrier monopole wired internally. The antennas will be concealed inside. It is a good location for filling in certain coverage gaps the town has. The land is public property, he said.

John Springer said that requests had been made to waive 6.3.3.0, for sight distance, and 6.3.3.2, for the high intensity soil survey. Steve Burns said that he had recommended waiving that one, because there was no serious excavation or change of grade. John Springer said that 6.3.1.4, written documentation from the Historic Commission, should be easily waived because there was obviously no presence of historic sites or buildings on the property. He called the waiver "self-evident." A waiver was also sought for 6.3.2.6, a letter from the Fire Chief address fire safety concerns. The reason, John Springer said, was because they were putting in an unmanned site.

The Applicant then offered to have its RF (Radio Frequency) Engineer give additional information. Glenn Farrell said that RF information is so complicated that the Town is having an expert review the information independently, on the town's behalf. Glen MacWilliams said that he wanted to retain the right to question the applicant's RF Engineer at some time.

Steve Burns said that his first meeting with the applicant was on June 6, 2004. He has since received calls from people about there not being a tower allowed in that part of town, York Heights. The Planning Board has jurisdiction only when the application is submitted, he said. In this case, the Applicant has given everything required, however what is given does not comply with the Town Ordinances. A tower is not allowed where it is proposed, and there are inadequate buffers. A 1996 Telecommunications Act, Steve Burns continued, says that after a certain point, towns can't preclude wireless service. Wireless service is a federal priority. Mark Hutchins of Brattleboro, Vermont, has been hired by the town to look at the federal standard as a RF Engineer.

The Chairman opened the Public Hearing. Caroline Macdonald, an abutter in York Heights said that the Water District had signed a lease in 2004 with an infrastructure company. Many neighbors have come with the meeting that evening with a petition asking the Planning Board to deny that application. Their presence showed the strength of their conviction. Concerns include the visual impact, health concerns (radiation), and falling towers. Why did the Water district let these people down? Why did it get signed, when the Water District furnishes water? She asked the Board to look extremely carefully at all rules, regulations, and laws in the preservation of the local zoning authority

and the exercising of due diligence. The Planning Board has the responsibility to these folks not to allow travesty into the neighborhoods.

Dave Francis handed out a packet. The cover sheet pictured a fine York Heights home with a wireless tower looming overhead. In his talk, he defined himself as a realist, not an alarmist. He addressed the power of local zoning, saying, "Do local zoning authorities have any authority to deny a request for tower siting?" His detail answer included the point, "The FCC simply requires the denials be based on a reasoned approach." He went on to describe the proposed tower as a "wireless shopping center" that the builders plan to lease out. He noted that co-location opportunities were overlooked. He also commented that the Water District should at once be shown respect and disappoint for its signing the 40-42 year lease against the spirit of the town's ordinances and the peoples' votes and without a meeting with the Town to review the proposal without signing. Dave Francis continued through the 5-½-page document, also signed by Cynthia Francis. He received strong applause from the large audience when he was finished.

John Peterson spoke. He lives 100 feet from the water tower in a house his mother bought in 1992. His retired stepfather had worked in cell phones and other phone company "stuff," but the father had commented that has never seen a tower in a residential neighborhood. The stepfather had said that towers require maintenance and testing all hours of the day and night. A few months ago, John Peterson's mother asked about the survey markers that were going up around the water tower. The water company workers answered that they didn't know what they were about, which his mother thought was underhanded. Reading from a web site page that he gave to Steve Burns, John Peterson said that every Federal Court that has considered aesthetics in a case such as this has upheld for the aesthetics. The potential devaluation of property is also a good reason to deny in court, he said.

Chairman Barrie Munro asked Nancy Lambert to speak. She had been part of the team that wrote and presented the WCF ordinances for the Town of York. She said that if there were a way to mount an antenna invisibly, that would be okay by the ordinance. A ground mount cannot go above the tree line. A lower facility would allow a wireless carrier to provide a signal at a lower height. A disguised structure might resemble a tree that could even extend above the tree canopy. Capacity is the problem, when there are so many users. Lower mounts and lower power are the future, because they will meet the capacity that cannot currently be meet.

Michele Moody spoke next. She said she had been on the committee with Nancy Lambert and Barrie Munro, who, with the assistance of an attorney, wrote the wireless ordinance. The likelihood is good that more and smaller locations will become the demand, but unfortunately, right now, tower companies drive the demand. She is saddened that the Water District signed the lease. The proposed antennae should have been on the water tank, not a tower. She told the Planning Board to have "everything ready," because it seems the Town is being set up to go to court.

Per Joans said he applauded the Board for hiring the RF Engineer expert. The board should have the expert look at sites that are equally as effective.

Torbert Macdonald spoke as a citizen, not as a selectman. He talked about the waiver to reduce the permitted setback that the applicant considers public property. Attorney John Springer then said that he considers the proposed site public property. Torbert Macdonald called the water district property a quasi-public entity. If the piece of land happened to be in the monopole district, it could come close to meeting the requirements for the setbacks, he said. As it is, the lot is a residual lot from a paper subdivision made many years ago. When the tower was proposed, notice should have been posted in public sight. Before any crane or balloon testing, a notice had to have been there for 21 days. But there was no posting. He said he did not understand how a Town-sanctioned group like the Water Department could work against the good of the Town. He said the topic would be discussed at the joint meeting between the Planning Board and the Board of Selectmen the following week. He asked if the RF Engineer is licensed in Maine, warning that it would be best if he were. He said that any argument against the Applicant based on radiation pollution is a weak case. He described the holding company, National Grid, as a UK company comparable to ENRON. At one point, he elaborated on his illustrious political heritage.

Abutter Kathryn Mulhern agreed that the proposed tower is an imposition and is opposed by many. She said that the project is about money and that many individuals will benefit from project, asking if agreements exist for people in the Water District who will personally benefit from the success of the project. Barrie Munro instructed Steve Burns to contact the Chairman of the Water District and ask him that question.

Steve Burns read a letter from David Lincoln, who wrote, among other things, that the tower is a bad idea and “defaces the community contradicting Town Charter. It is against ordinances.”

Frances Kirshner said that the tower may not be in everyone else’s neighborhood, but the matter of putting a business in a neighborhood is not a good measure.

Barrie Munro closed the public hearing.

Motion Glenn Farrell moved to deny 6.3.2.6, the letter from the Fire Chief finding the submission completely satisfactory. Glenn Farrell added that the Planning Board never waives that requirement. Richard Smith seconded the motion.

In discussion, Steve Burns said that the applicant apparently thinks the requirement is about fire hydrants. There are concerns about safety and issues beyond that.

Vote The motion passed, 5-0.

Chairman Barrie Munro said that since the application is incomplete, the Planning Board would not accept it as complete for purposes of review.

Richard Smith asked if the decision could be made if the land is public or private. Barrie Munro answered that the Town Attorney will be asked if the Water District is public or private.

Other Business/Adjourn.

Glen MacWilliams distributed a letter to the Board of Architects requesting clarification about how the Planning Board should act when it receives uncertified drawings. At those times, it is apparent that architecture is being practiced without a license. He commented that two recent cases were among the many that had no certification. Even the Eldridge elevations received earlier in the meeting was stamped by a "Registered Professional Engineer," but what kind? Glenn Farrell asked if applicants could come in with a stamp by a structural engineer. Glen MacWilliams said that he did not have the answers.

Glenn Farrell said that a dinner for former Planning Board member Dave Marshall would be held on January 20, 2004, at 7:00.

Barry Munro had gotten a message from Dick Ballkite that a talk Growth Without Limits would be held at St. George's from 9:00 to 10:00 on the upcoming Sunday, December 12.

Steve Burns passed out handouts, including one about Land Use Law in Oregon from the *New York Times*. He also passed out a notice about the joint Board of Selectmen meeting upcoming on December 14.

The meeting ended at 9:50.