

**TOWN OF YORK PLANNING BOARD  
THURSDAY, OCTOBER 27, 2005, 7:00 PM  
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Chairman Barrie Munro began the meeting at 7:05. All of the Planning Board members were present: Glenn Farrell, Barrie Munro, Richard Smith, Glen MacWilliams, Tom Manzi, and alternates Lee Corbin and Michelle Moody. Town Planner Steve Burns represented staff. Patience Horton took Minutes. The chairman began by introducing members of the board and staff. He reviewed the agenda.

**Public Input**

**Open to the public to address any issue**

**Stan Moody**, Vice Chairman of the York Conservation Commission, said he was disappointed that an amendment proposed by the Conservation Commission had not been put on the upcoming November ballot. Though Code Enforcement had interpreted the original ordinance concerning setbacks for septic systems correctly for 12 years, one applicant's lawyer had found a loophole enabling an applicant to interpret the ordinance differently than intended. In the amendment, the Conservation Commission had provided language that would revert to the original intent. Stan Moody said that the Planning Board's failure to support the amendment has led the Conservation Commission to take independent action in placing the amendment on the May referendum.

**Andrew Merlino** spoke next. He asked to extend a culvert by five feet on an existing, approved plan. Town Planner Steve Burns said that he had not seen the proposed change. Andrew Merlino handed the plan to him. Barrie Munro said that Staff would look at it and contact him by telephone. With no other matters, the chairman closed Public Input.

**Business**

**Pine Hill Cottages. 64 Pine Hill Road. Map 1/Lot 2. Public Hearing to discuss a 5-lot subdivision. Application tabled from the October 13<sup>th</sup> meeting.**

Board member Michelle Moody left the room due to a conflict of interest. Applicant Robert Satter introduced Ben Walden from his office and Ken Wood of Attar Engineering. Robert Satter described his plan for the 15.4-acre, five-lot subdivision as follows. Sewer service will come from the Town of Ogunquit. The survey is by Anderson Livingston Engineering. Frontage is on Route 1 and on Pine Hill Road, but with no direct access onto Route 1. About 50% of the land is unsuitable for building, under York's ordinance. Single-family homes will be built. Because of this subdivision, the neighbors on top of Pine Hill will be able to get sewer service, which they have wanted. Neighbors on the Ogunquit side have been concerned about drainage from the property. The lot sizes will be between 2.9 acres and 3.2 acres. Kennebunk Kennebunkport & Wells Water Department (KK&W) has agreed to bring water to the development. Money is in escrow for resurfacing the road. A traffic survey showed that the estimated travel usage would be 35 to 50 trips a day, so capacity is not an issue. The road will be private. A waiver is

being requested to allow the first 100 feet of the road to be wider. It will then taper down. The sight distance from the proposed roadway is 500 feet to the south. An Oak tree currently obscures the view looking north. York Public Works Director Bill Bray had indicated that the Oak tree will be removed, as it is in a right-of-way owned by the Town of Ogunquit, and they have marked it to be removed. In the event of a 50-year storm, it is calculated that there will be six percent less water discharged from the property after the development is completed, meeting the requirement that there will be no more runoff than before development. To be compatible with the homes in the neighborhood, the new houses will be surfaced with Maine-style shingles (he showed a photo of a home with that type of siding).

Project engineer **Ken Woods** spoke next. The plans had been supplied to the board. The storm water flow would be routed through retention areas and swales. The necessary waiver for the 900-foot long road will allow the first 100 feet to be 24 feet wide, tapering to 20 feet after that, which will use less pavement. He said that there is a letter from Bill Bray discussing swale and culvert issues. He discussed hydrant pressure at 750 gallons per minute.

Chairman Barrie Munro opened the **Public Hearing**. Representing the Conservation Commission, **Stan Moody** said that reducing the curvature of the road and keeping construction out of the wetland would require less pavement on the road and lower the impact on the 1000 square feet of wetland. Speaking as an individual citizen, he said he thought that with the road being next to the property line, proposed embankments would encroach on the adjoining property owner's land. He recommended looking carefully at the profile of the road, as he had seen inadequately designed roads result from the same situation.

**Barry Kean** of 126 Pine Hill Road said that his recent abutter's notice had been the first he had been aware of the proposed subdivision. He is a Massachusetts resident with property in Ogunquit. He asked if the board members had walked the property. Yes, they had. He wondered how the houses would get on all the ledge that is there. Also, if anyone is anticipating that cars will drive at 25 MPH on Pine Hill Road, it's a misconception. He described cars "barreling" along there, particularly between 6:00 and 8:00 in the morning and around 5:00 in the afternoon. He had asked the Town to put in speed bumps and was told that the Town would analyze the speed, but it was not done. Barry Kean said that the entrance at the base of the hill is very dangerous, especially for pedestrians. He again questioned how that land could provide for five houses. He requested information from the other meetings. The chairman explained that this was the first substantive meeting.

**Sharon Murphy Dash** spoke briefly. She said that she is an abutter and finds that walking Pine Hill Road is very scary. Also, the runoff from the applicant property is a sheet of ice in winter. She asked for safe sight distances. With no one else to speak, the chairman closed the Public Hearing.

Chairman Barrie Munro asked the applicant if all the material was in for a factual review, and if the conditions for completeness had been met. He and Ken Wood then went over the different elements constituting completeness, beginning with the existence of a boundary survey, and then following the listed routine concerns, after which Barrie Munro said that he felt that Subdivision Regulations Items 6.3 through 6.3.35 satisfied the requirements of the preliminary plan. Glenn Farrell asked about the required letter from the water department concerning the fire hydrant flow test. Ken Wood said the information was in a September 7 letter from KK&W. Lee Corbin noted that an October 11 letter stated that the Water District had received final approval and that KK&W had not received the plans. Ken Wood answered that they had the preliminary plans but not the final plans.

**Motion** Tom Manzi moved that the application was complete for the purposes of reviewing the preliminary plan. Glen MacWilliams seconded the motion.

In discussion, Tom Manzi asked Glen MacWilliams if the correct professional stamps were on the plan. Glen MacWilliams answered yes. Glen MacWilliams asked about the ledge on Lot 1, where there is contouring and about 20 feet of elevation change. He thought it might be too precarious for a driveway. Ken Wood said that the intention was to put the driveway away from the ledge. Glen MacWilliams said that the Planning Board would want to make that a requirement. Tom Manzi said that after subtracting out the proposed grading and contouring for Lot 1, the 3.07 acres are reduced to about one buildable acre. Barrie Munro asked if every lot satisfied the requirement. Glen MacWilliams said that it is a difficult site. How the builder gets in there will impact a lot of things. Ken Wood said that about one-half of the land is lost in net developable. The location for the road was also due to the topography. A retaining wall will be necessary at the base of the hill, on the north side of the new road.

Barrie Munro commented that the first portion of the road is dramatically steep, as it goes up the hill. Ken Wood said that the maximum slope toward the end is an acceptable six percent grade. Barrie Munro asked about drainage and the ice condition in winter. Ken Wood answered that there will be a culvert under the driveway and a swale on the south side of Pine Hill Road. The subdivision would not increase the sheet flow onto the road, he said.

Barrie Munro asked about the sight distance when the tree is removed. Glen MacWilliams asked if, with 19 feet of pavement and 3 feet of shoulder, there is adequate room for pedestrians to get off the road when walking. Applicant Bob Satter answered that one 25 MPH speed limit sign was located ½ mil to the north. Suggesting that other signage would be good at the top of the hill, he offered to provide the signs, himself. Barrie Munro brought up Bill Bray's input on the curb cut. Glenn Farrell asked if a different corporation had to sign off on the current activities, because part of the submission was on that other company's letterhead. Indicating that everything was legally okay, Bob Satter said that the older corporation had evolved into the current one. Glenn Farrell added that when the applicant returns, abutters would have to get a heads-up about how much blasting will have to be done.

Barrie Munro said that the Article 6.3 submissions had been satisfied.

**Motion** Glen MacWilliams moved to approval of the preliminary plan submission. Tom Manzi seconded the motion, which passed, 5-0.

There was a five-minute recess.

**Meadowbrook Plaza LLC and York Meadowbrook Plaza II, LLC. 647 & 659 U.S. Route One. Map 91/Lots 8W & 8Y. No public hearing. The Planning Board will review the application to determine whether or not the application is complete. This was deferred from the October 20<sup>th</sup> meeting. If the application is determined to be complete, the Planning Board will conduct a Public Hearing and will deliberate and possibly decide on the applications for these sites at the meeting on November 10<sup>th</sup>.**

Barrie Munro referred to the application as a very important application under an unusual set of circumstances. He read his document *Meadowbrook Plaza/Dexter Remand Meeting, October 27<sup>th</sup>, 2005*. It laid out the procedure for the evening's work, including "Tonight there will be no public hearing. . . This evening's work will begin with a review of Article 18.1.4.2,A and small a thru z to determine if the Route One use permit Application is complete for the purposes of review."

Applicant Attorney Greg Orso asked to address the process. He said the January 13, 2005 Planning Board review dealt with completeness of the Meadowbrook Plaza Lot. The Dexter Shoe lot part of the application was already complete, he said. The Board of Appeals heard two issues: the Meadowbrook and Dexter Shoe. The Meadowbrook was granted with a finding that the applicant had to give a complete application to the Planning Board within 90 days. The Meadowbrook Plaza is the only one before the Planning Board for completeness, he said.

Michelle Moody said that she had attended the Appeals Board hearing. She said that the Appeals Board upheld the Meadowbrook application and it was the Dexter Shoe application sent to the Planning Board for completeness. Steve Burns concurred with Michelle Moody. He said that the Appeals Board had two appeals. The order said that the Dexter site was the one with 90 days to prove completeness. Glenn Farrell asked which site was Map 90, Lot 8Y. Steve Burns answered it was the Dexter site. Reading the motion for the Appeals Board minutes found in the Barrie Munro document, Glenn Farrell said that Map 90, Lot 8Y, Dexter Shoe building, was the site the Appeals Board sent back for completeness [the Appeals Board Motion follows].

Motion made by Leon Moulton to remand this matter back to the Planning Board to hold a final public hearing on a completed application within 90 days. If the applicant fails to produce a completed application within 90 days of tonight (July 13, 2005) the application shall be voided. Land use codes as of the date of the original application are to be applied for the determination of this matter of Seacoast Maine Donuts Map No. 90, Lot 8Y.

Attorney Greg Orso said that the Dexter application was complete, and Meadowbrook was not complete. He said he did not want to do completeness on both, when it was only necessary for Meadowbrook. Steve Burns said that the Appeals Board kept the two applications separate. The order of the Appeals Board stands, and it deals with the Dexter site. Barrie Munro asked if Greg Orso was willing to have Dexter reviewed by Article 18, sections a) through k). Greg Orso replied that his point was that Dexter was already complete, making Dexter inappropriate to review. Glenn Farrell said that the matter was before the Planning Board because the Appeals Board sent it back. The motion to remand it specifies Map 91, Lot 8Y. That affects the Dexter side. Glen MacWilliams said that the board had no choice. The Planning Board has to apply to the requirement of the Appeals Board.

Barrie Munro polled the board members on their positions. Glenn Farrell said that Greg Orso's argument should have been made to the Appeals Board. Lee Corbin passed, making no comment. Tom Manzi said that an opinion from the Town Attorney was necessary. He was concerned that the Planning Board's action might create a basis and the appeal would be sent back to the Appeals Board. Michelle Moody said that she agreed with Glenn Farrell that the Leon Moulton Appeals Board Motion specified that the completeness review concerned the Dexter lot. Recalling the Appeals hearing she had attended last summer, she said the Meadowbrook findings had been upheld, but that the Maine Department of Transportation (MDOT) permitting issues were not complete for Dexter because the conditions were not met. There was no way to handle traffic.

Greg Orso argued that the original application was voided because the Town did not give adequate abutter notice for the review. Michelle Moody said that an applicant did not receive notice, plus MDOT did not give a permit. Barrie Munro said that the remand order dealt with the Dexter lot. He said that the timing of the ordinance—the definition of fast food—was the showstopper that caused the appeal. The Planning Board had approved the application until MDOT got involved. Town Planner Steve Burns said that when he went back to the Appeals Board to ask to have the instructions explained, they said the second application (Meadowbrook) was complete, and the Planning Board had to have a hearing, which was backward order, he said. Lee Corbin said that if the Dexter application was deemed complete in 2003, the Meadowbrook Plaza section was not complete as of January 2005. Did the interaction between the two applications caused by MDOT void the completeness for Dexter Shoe? she asked.

Greg Orso said that if it were complete, the process would be to go forward under the old ordinance substantively. Glenn Farrell agreed that it should be approached as the Appeals Board said to do—review it under the old ordinance.

**Motion** Glen MacWilliams moved to use the language of the Appeals Board's motion (to hold a public hearing within 90 days) and use 18.1.4.2 in its entirety to determine the Planning Board's findings. No one seconded the motion.

Steve Burns said that it would be best to decide whether or not it is a complete application and then move forward with the remand. Greg Orso said that if the literal interpreta-

tion of the Appeals Board motion is taken, then there has to be a public hearing. Barrie Munro asked Glen MacWilliams to withdraw the motion, which he did. Barrie Munro asked for a motion that attempts to implement the remand order.

**Motion** Glenn Farrell moved that as per the request of the Appeals Board, the Planning Board will review the application for Map 91, Lot 8Y. Glen MacWilliams seconded the motion.

In discussion, Lee Corbin asked to add the language “as the Appeals Board specified for completeness.” Michelle Moody asked that the procedure follows *Robert’s Rules* by making a motion to amend the original motion.

**Motion** Glenn Farrell moved to add the language “as the Appeals Board specified for completeness.” Glen MacWilliams seconded the motion, which passed, 5-0.

The recording secretary was asked to read the motion back. She said, “As per the request of the Appeals Board, the Planning Board will review the application for Map 91, Lot 8Y, as the appeals board specified, for completeness.” That language became the body of the Motion.

In discussion, Tom Manzi said that the Planning Board members did not have all of the documents or a brief in them, not do they have the advantage of knowing about all of the historical events. Barrie Munro said that overall submission has to be tested for completeness.

**Vote** The motion to review the application for completeness passed, 5-0.

The board discussed which subsections of Article 18.1.4.2 to use. Michelle Moody said that going through that Article, item by item, would satisfy the requirement. The chairman agreed. **Doug Reynolds** represented Seacoast Donuts in answering to the requirements. The required subsections were Article 18.1.4.2, a. through z., of the Town of York Zoning Ordinance Adopted 3/18/92. [The headings for the Items are abbreviated.]

**a. A place for Planning Board signature.** There was no discussion

**Motion** Richard Smith moved that Item a. satisfied that requirement for completeness. Glenn Farrell seconded the motion, which passed, 5-0.

**b. Project Name, Owner Name, Engineer Name, etc.** Greg Orso replied that the information was located in the blue books.

**Motion** Glenn Farrell moved that Item b. satisfies the requirement for completeness. Richard Smith seconded the motion, which passed, 5-0.

**c. Boundary Survey.** In discussion Glen MacWilliams stated the Meadowbrook property had not been surveyed, but Anderson Livingston Engineers had surveyed Dexter Shoe in August 2004.

**Motion** Glenn Farrell moved that Item c. satisfies the requirements for completeness. Richard Smith seconded the motion, which passed 5-0.

**d. Date, Scale, and Arrow North.** No discussion.

**Motion** Glen MacWilliams moved that Item d. satisfies the requirement for completeness. Richard Smith seconded the motion, which passed, 5-0

**e) Map and Lot Number.** In discussion, Greg Orso said that the map and lot number is located on the application. Glenn Farrell said that it complied with the requirement

**Motion** Glenn Farrell moved that Item e. satisfies the requirements for completeness. Glen MacWilliams seconded the motion, which passed, 5-0.

**f) Locus Map.** No discussion.

**Motion** Glen MacWilliams moved to accept Item f. for completeness. Glenn Farrell seconded the motion, which passed 5-0.

**g) Dates Plan Prepared and Revised.** In discussion Glen MacWilliams said he was not sure if the plan had the current dates. Applicant representative Doug Reynolds said that September, 2004, was the latest revision date from Anderson Livingston, which Glen MacWilliams agreed was adequate.

**Motion** Glen MacWilliams moved to accept Item g. as complete. Glenn Farrell seconded the motion, which passed 5-0

**h) Proof of Ownership.** No discussion.

**Motion** Glenn Farrell moved to accept Item h. as complete. Glen MacWilliams seconded the motion, which passed, 5-0.

**i) Topographical Features.** No discussion.

**Motion** Glen MacWilliams moved to accept Item i. as complete. Richard Smith seconded the motion, which passed, 5-0.

**j) Existing Built Features** In discussion, Barrie Munro felt it best to approach each item listed in the Item, one by one, to determine whether or not it was complete. Those items included "buildings and structures; utility services including public sewer or on-site disposal system, public water or well, etc." The plans referenced for this item were by Gorill-Palmer. The Planning Board felt that the landscaping, as it currently exists on the Dexter lot, was missing from the plans. Steve Burns said that the prior engineer for Enterprise Rent-a-Car had trees on the 2002 plan. Do you include things from an old file? he asked. Barrie Munro said that Board was looking for a complete application as of the October 11, 2005 submission. Item j), he said, was complete except for the absence of vegetation on the existing plan.

**Motion** Tom Manzi moved that Item j. not be accepted for completeness. Glen MacWilliams seconded the motion, which passed 5-0.

**k) Location of Proposed Development.** The board members discussed the proposed features, especially the septic system and the possibility of tying it into the pumping station.

**Motion** Glen MacWilliams moved that Item k. satisfies the requirements for completion. Glenn Farrell seconded the motion, which passed 5-0.

**l) Acceptable Sewage Disposal.** In discussion, Michelle Moody said that the board did not have a letter from the Sewer Department saying that the applicant could tie in to the system. Nor was there anything showing adequacy for on-site septic. There was an October 13, 2005 letter from Timothy Haskell of the Sewer Department saying that the applicant could *not* tie in. Tom Manzi read that letter into the record. It confirmed that no one had contacted the Sewer Department about connection. Furthermore the connection point could not be utilized, the letter said. Only a direct connection downstream of the new lift could be allowed, if a separate easement could be provided.

Greg Orso said that the lot had its own septic. Barrie Munro asked if there was certification to the fact. Steve Burns said that the applicant could request of waiver of 6.3.12.1. Barrie Munro said that it had been established if a building were situated within 750 feet distance of the pump station, the board could make it mandatory to connect. Michelle Moody said that the applicant did not meet Item l., and therefore, Item l. was not complete. Doug Reynolds said that the pump station is private and was located more than 750 feet away from the site. Steve Burns suggested scaling it right off the plan, and he took a ruler and determined that the distance to the pumping station was about 450 feet. Barrie Munro said that there was no definitive authority on septic or sewer

**Motion** Glenn Farrell moved that the application was not complete as to Item l. Glen MacWilliams seconded the motion, which passed, 5-0.

**m) Availability of an Acceptable Water Supply.** Barrie Munro said the board had not received a letter from the Water Department about the proposal. Since this is a use permit, all of the utilities have to be accounted for. Glenn Farrell said that there has to be evidence on the plan that the building is connected to Town water.

**Motion** Glenn Farrell moved that the article is incomplete per Item m. Glen MacWilliams seconded the motion, which passed, 5-0.

**n) Acceptable waste and recycling collection.** Doug Reynolds indicated that the necessary information was on the Anderson Livingston plan.

**Motion** Glenn Farrell moved that the application was complete as per Item n. Glen MacWilliams seconded the motion, which passed 5-0.

**o. Landscaping and Buffering Requirements.** There was no discussion.

**Motion** Glen MacWilliams moved that the application was complete as to landscaping, Item o. Richard seconded the motion, which passed, 5-0.

**p) Signage.** In discussion, Barrie Munro said that he did not think signage existed on the plan. Doug Reynolds pointed out a stop sign on the Anderson Livingston plan. Greg Orso said that the signage was on previous Tavares Architects plan, dated November 18, 2002, and not the on Anderson Livingston plan. Barrie Munro asked if there was a professional seal on the 2002 plan. The answer was yes. Michelle Moody asked how the board could go forward if the plans were not submitted to the board. Glenn Farrell said

that the article fails because those plans were to be part of the package submitted on October 11, 2005.

**Motion** Tom Manzi moved that the application was not complete per Item p. Glen MacWilliams seconded the motion, which passed 5-0.

**q. Construction Drawings of Proposed Structures.** In discussion, Glen MacWilliams said that construction drawings were not included in the October 11 submission, and there were no professional stamps. Barrie Munro commented that the building's footprint was not consistent with the drawing, because it showed one entrance when there should have been two.

**Motion** Glen MacWilliams moved that Item q. fails for completeness. Glenn Farrell seconded the motion, which passed, 5-0.

**r. Historic Structures and Features.** In discussion, Greg Orso said that since there were no historical features within 1,000 feet of the building, he had nothing to submit to that fact. He had no proof of a negative. Barrie Munro suggested a letter from a historic society could state it. Glen MacWilliams said that some kind of evidence should be provided

**Motion** Glenn Farrell moved that Item r. meets the requirement for completeness. Glen MacWilliams seconded the motion, which passed 4-1. Tom Manzi voted against.

**s. Open Space in Perpetuity.** It was not applicable, and therefore complies.

**Motion** Glen MacWilliams moved and Glenn Farrell seconded that Item s. meets the requirement for completeness. The motion passed, 5-0.

**t. Public Safety.** In discussion, Michelle Moody said that there was a letter from the Police Chief saying that Police did not get the plan and had not reviewed the application. Steve Burns said that the Fire Chief had said that the last time he saw this application, it was for Enterprise and not even Dunkin Donuts. That was in 2002.

**Motion** Glen MacWilliams moved that Item t. does not comply for completeness. Richard Smith seconded the motion, which passed 5-0.

**u. Traffic Safety.** Doug Reynolds said that there is a past due MDOT permit. Steve Burns showed the traffic study.

**Motion** Barrie moved that Item u. satisfies the requirement for completeness. Glenn Farrell seconded the motion, which passed 4-1. Tom Manzi voted against the motion because some evidence that was submitted had expired.

**v. Impact on the Delivery of Town Services.** In discussion Greg Orso said that the applicant does not have a way to address this article.

**Motion** Glenn Farrell moved that the Item v. does not meet the requirement for completeness. Glen MacWilliams seconded the motion, which passed, 5-0.

**w. Net Buildable Acreage.** In discussion, Doug Reynolds said that the information was available on the Meadowbrook plan.

**Motion** Glen MacWilliams moved that Item w. fails as incomplete for purposes of review. Glenn Farrell seconded the motion, which passed, 5-0.

**x. Performance Guarantee.** In discussion Steve Burns said that a plan note at the end of the process about the letter of security would take care of the performance guarantee. Glen MacWilliams said that an agreement could be made that the guarantee is forthcoming.

**Motion** Glenn Farrell moved that the letter of security can be deferred and is not required at this time. Glen MacWilliams seconded the motion, which passed, 5-0.

**y. Waivers** In discussion, Greg Orso said that there were no waiver requests at the time.

**Motion** Glenn Farrell moved that Item y. passes the requirement for completeness. Glen MacWilliams seconded the motion, which passed, 5-0.

**z. Other Zoning Standards.** There were not other zoning standards to discuss at that time.

**Motion** Glenn Farrell moved to defer Item z. Tom Manzi seconded the motion, which passed, 5-0.

Barrie Munro stated that **Items j., l., m., p., q., t., v., and w. had failed.**

**Motion** Glenn Farrell moved that as per the remand specified by the Appeals Board within 90 days of its hearing, and through the Planning Board's review that evening, that by failing Articles j., l., m., p., q., t., v., and w., the applicant did not meet the requirements for a complete application. Glen MacWilliams seconded the motion, which passed 5-0.

Attorney Greg Orso said that the applicant wanted the exact language of the Findings of Fact as part of the record. Glenn Farrell then re-read the Leon Moulton/Appeals Board motion (on Page 5 of this document). Glen MacWilliams added that the Administrative Appeals Findings should be included as part of the Planning Board Findings.

There was a short break.

## **Discuss possible amendments to York's Residential Growth Ordinance.**

The agenda called for a discussion about the Growth Ordinance and recommendations about it for the Board of Selectmen. The chairman asked if there was any one in the audience present for that issue, and there were none. Michelle Moody said that she had gone the Selectmen's meeting and asked about it. She was told that they would be finishing the Growth Ordinance discussion during their November 7 meeting, when the new Town Manager is there.

## **Other Business**

**--Question about compliance at the Atlantic House.**

Chairman Barrie Munro began the discussion about how the Atlantic House/Kearsarge House application would proceed that evening, including the viewing of about 30 minutes of videotape of the October 13, 2005 meeting. He said that there had been too much "heat" expressed at the last meeting [October 20], so he read Item 3 of Planning Board's bylaws cautioning the members to hold moderate discussions and that comments must be above reproach with no personal charges or verbal attacks against anyone, it said. The video telling the builder what he could and could not do during demolition was then shown.

The chairman said he was seeking an incontrovertible understanding about the agreement made with builder John DeStefano, and he had also asked the applicant to provide the board with his recollection of the instructions from the board and the applicant's instructions to the contractor. He wanted to know exactly who was at fault. Barrie Munro then read a letter from Brett Horr, Town of York GIS Manager, who was the staff representative at the meeting in question (October 13, 2005). By Brett Horr's recollection the applicant had been allowed to remove lath, plaster, fixtures, and cabinets, as well as gut the asbestos and non-essential elements, he wrote.

Peter Dunfey, the applicant's assistant and representative, was asked what instructions he had received following the meeting. Peter Dunfey replied that the applicants were satisfied with the decision of the Planning Board. He said that John DeStefano told the contractors to act on the quote they had prepared. The contractor removed the asbestos they had identified, including the windows. Barrie Munro commented that removing the windows affected the appearance of the building. John DeStefano replied that he was surprised that the windows had been removed. Back at the beginning of the summer, a dozen windows had already been removed and the spaces boarded up. Those windows were saved, as were the ones recently removed. He referred to Article 12, the action as part of a state of repair.

Barrie Munro polled board members. Tom Manzi felt that the applicant had overtly disregarded the Planning Board's instruction. He recommended that the applicant be held in violation and there be a penalty. Michelle Moody said that work was listed on the quote, and the window removal might have been an oversight. If the quote included the removal of the windows, it would have been nice if it had come to the board about it. Board discussion at the first meeting had indicated that the work was only to be interior. There was no discussion of doing any exterior work. Barrie Munro commented that this had been serious disregard of the Planning Board's intention.

Glenn Farrell asked John DeStefano what John's understanding was about the windows. John DeStefano answered that when he was at the meeting and talking about what would be taken out, every item of asbestos was not specified. The windows were part of the asbestos project. His oversight had been that the asbestos has to be removed at once by trained professionals, but he had not thought about windows and the exterior. Glenn Farrell asked him if he had the understanding that the windows were supposed to stay in. He answered, yeah, definitely. The windows were saved in case they were told to put them

back in, he added. He said he had not equated the windows with asbestos. Lee Corbin asked if the contract with the asbestos people specified that the windows would be removed. John DeStefano answered that an industrial hygienist determines what has asbestos in the building. When asbestos is in the glazing, the whole window is taken out and it goes into a regulated landfill for disposal. The building has to be declared safe for asbestos to let people come in to work.

John DeStefano said that it was an oversight on his own judgment. He did not think far enough ahead. If the application fails to get approval, the windows will be put back in with the glazing that has the asbestos, he said.

Peter Dunfey then showed a picture of the Atlantic House with windows boarded up. Lee Corbin said that when taking out the asbestos, it has to be contained. Taking it out, it is necessary to keep it from flowing in the air. John DeStefano agreed. Glen MacWilliams said that anyone could make a mistake. This one just happened. It was oversight. Richard Smith looked at a printed out copy of the permit Steve Burns had provided. It was for asbestos and other stuff, Richard said.

Tom Manzi commented that a gray material was covering the plywood that covered the windows. John DeStefano said that the plastic was for protection from the weather. Tom Manzi said that the Planning Board has good will toward the project, and that to err is human. The board should agree that this was a mistake.

Barrie Munro asked what the board should provide the applicant at that time. Glen MacWilliams answered that the board should go forward with the permits and get the required letter from the Historic District Commission (HDC). Lee Corbin said that the action was an honest mistake. Removing the glazing without taking out the windows can be extremely difficult. Barrie Munro said that the Chair understands that the board will take no action. John DeStefano offered to put the windows in until approval.

In related business, **Helen Rollins Lords**, Chairman of the HDC said that the HDC is responsible for the exterior of the building, including windows. She said she did not think taking out the windows was a mistake, implying it was deliberate. She strongly objected to the board's forgiving action, and she told the Planning Board that they did not have any authority, because they had not received the letter from the HDC.

Barrie Munro moved on to a letter received from applicant representative Peter Dunfey, inquiring whether or not there is a town ordinance that would prevent construction activity in the BUS-1 zone of York Beach during June, July, and August. Steve Burns said that the answer was no. Michelle Moody added that Planning Board could impose restrictions about the time of day when construction can go on.

**In Other Business**, there were two site visits coming up the following Saturday. Also, he announced that the Draft Agenda for the November 10 meeting has new changes in the order of business

- Public input

- Field changes
- Applicant reviews with public hearings
- Applications being checked for completeness (do not require abutter notice)

In other business, **Joe Lipton** of the HDC said that he had studied HDC procedures to get an understanding of the Commission's role in the Planning process. He spoke about his understanding of the certificate of appropriateness. Steve Burns told him that the Atlantic/Kearsarge Houses were next coming to see if their applications are complete.

Steve Burns said that The **Sanford Institute for Savings** applicant has arranged with the Fire Chief for the Mandarin Inn burn, though the chief was not happy that the Planning Board wanted to intercede. Barrie Munro said that there was nothing wrong with that, and if it comes before the Planning Board again, the board will do it.

In Other Business, a legal opinion sought about the fee amendment had indicated that the amendment was legal.

Barrie Munro briefly read from ordinance about the purpose of the growth cap and commented on it.

The meeting was adjourned at 11:55.

*Agenda amended 10/14/2005—Pine Hill Cottages added to agenda per direction of the Planning Board at the 10/13/2005 meeting.*

*Agenda amended 10/20/2005—York Meadowbrook Plaza LLC and York Meadowbrook Plaza II, LLC application review modified per direction of the Planning Board at the 10/20/2005 meeting.*

*These minutes were amended and approved by the Planning Board on November 10, 2005. These minutes expressly include the Findings of Fact, Conclusions of Law and Decision regarding York Meadowbrook Plaza II, LLC, signed by Barrie Munro, Chair, and include and incorporate by reference the video recording of the October 27, 2005 meeting.*

**Findings of Fact, Conclusions of Law and Decision  
TOWN OF YORK PLANNING BOARD**

**659 U.S. Route One, York, Maine  
York Meadowbrook Plaza II, LLC  
MAP 0091/LOT 0008-Y**

1. On July 13, 2005, the Board of Appeals remanded the application for the Dexter site (Map 0091-Lot 0008-Y) back to the Planning Board. This decision voided earlier decisions about the application for a Route One Use Permit to re-develop this property.  
*A: BOA Remand Order dated July 13, 2005 is attached.*
2. In a separate decision on July 13, 2005, the Board of Appeals upheld a Planning Board decision to not accept an application to amend the approved Meadowbrook Plaza (Map 0091-0008-W) Site Plan because the submittal was incomplete. The proposed re-development of the Dexter site required off-site improvements on this abutting property.  
*B: BOA Remand Order dated July 13, 2005 is attached.*
3. The remand order gave the applicant 90 days to prepare a complete application.
4. During the intervening 90-day period, Mike Welch, a prospective tenant at the Dexter site, requested a meeting with staff. Brett Horr, GIS Manager in the Planning Department, responded to this request due to the unanticipated and extended medical leave of the Town Planner.
5. To ensure his understanding of the situation with this application, Mr. Horr attended the September 14, 2005 meeting of the Board of Appeals to request clarification of the remand order. Mr. Orso, the applicant's authorized representative, was also present.  
*C: The video tape of the September 14, 2005 Board of Appeals meeting is incorporated by reference.*
6. The day after his meeting with the Board of Appeals, Mr. Horr e-mailed a list of issues to Mr. Orso.  
*D: Copy of 9/15/2005 e-mail is attached.*
7. A meeting was held on September 26, 2005, with the following people in attendance: King Weinstein, Mike Welch, Doug Reynolds, Barrie Munro, and Brett Horr.
8. The applicant provided the following materials prior to the end of the 90-day deadline:

1. New application form for the Dexter site. This is a bound report with the blue *Erwin, Ott, Clark & Campbell* cover, with a title of: "Seacoast Donuts; Planning Board Application Form; September 9, 2005." This report includes:
  - A completed application form, signed by King Weinstein on August 26, 2005.
  - The property deed.
  - Information about the company that owns the property.
  
2. New application form for the Meadowbrook Plaza. This is a bound report with the blue *Erwin, Ott, Clark & Campbell* cover, with a title of: "Meadowbrook Plaza Upgrade; Planning Board Application Form; September 9, 2005." This report includes:
  - A completed application form, signed by King Weinstein and Stanley Weinstein on August 26, 2005.
  - Documentation of ownership of the condominium
  - Property deeds.
  - Information about Cascade Corporation and York Meadowbrook Plaza LLC.
  - Condominium declaration.
  - York Meadowbrook Plaza Condominium Association documentation.
  - Association By-Laws.
  
3. Technical submittal addressing deficiencies of the initial application to amend the Meadowbrook Plaza site plan. Bound report with a green Gorrill-Palmer Consulting Engineers cover, with a title of: "Comments and Responses to Findings of Fact, Conclusions of Law, & Decisions, Planning Board, Town of York, Maine, July 13, 2005, Items 13, a-j, Meadowbrook Plaza; Prepared for Michael Welsh, 1976 Woodbury Avenue, Portsmouth, NH 03801; September 2005." This report includes:
  - Letter dated September 8, 2005 from Douglas E. Reynolds, PE, Senior Engineer at Gorrill-Palmer Consulting Engineers, responding to 10 deficiencies identified in January 2005 with the proposed amendment of the Meadowbrook Plaza site plan.
  - Stormwater management plan for the Dexter site and the Meadowbrook plaza.
  - Specification sheets regarding proposed exterior lighting fixtures for the Dexter site.
  - Plans, as follows:
    - "Second Amended Site plan of Meadowbrook Village, U.S. Route One, York, Maine." Prepared by William Anderson, PLS, in September 1994. Approved by the Planning Board on September 29, 1994.
    - Overall Plan for Dunkin Donuts/Meadowbrook Plaza, U.S. Route One, York, Maine." Prepared by unknown person—plan not professionally certified. From Anderson-

Livingston Engineers, Inc., revised through November 10, 2004.

- “Existing Conditions Plan, Meadowbrook Plaza.” Prepared by Douglas E. Reynolds, PE, of Gorrill-Palmer Consulting Engineers, certified on September 8, 2005. This plan depicts both the Meadowbrook Plaza and the Dexter site.
- “Modified Parking Plan, Meadowbrook Plaza.” Prepared by Douglas E. Reynolds, PE, of Gorrill-Palmer Consulting Engineers, certified on October 5, 2005. This plan depicts both the Meadowbrook Plaza and the Dexter site.
- “Planting Plan, Meadowbrook Plaza.” Prepared by unknown person—plan not professionally certified. From Mitchell & Associates, Landscape Architects, dated September 2005. This plan shows proposed landscaping only on the Meadowbrook Plaza property.
- “Conceptual Traffic Signal Plan, Meadowbrook Plaza, York, Maine.” Prepared by Ralph C. Norwood, PE, of Gorrill-Palmer Consulting Engineers, certified on September 8, 2005.

4. Letter from Douglas E. Reynolds, PE, dated October 11, 2005, responding to Brett Horr’s comments (see e-mail dated 9/15/05). The letter included the following attachments:
- Building plans for the former Dexter Shoe building, prepared by an unknown person—plans not professionally certified. From M.J.Tavares Architects. Sheets A-1 (floor plans) and A-5 (elevations).
  - “Overall Plan for Dunkin Donuts/Meadowbrook Plaza, U.S. Route One, York, Maine.” Professionally certified by William Anderson, PLS, and Michael Livingston, PE, of Anderson-Livingston Engineers, Inc., revised through November 10, 2004. This is the same plan submitted earlier, but with professional certifications this time.
  - “Modified Parking Plan, Meadowbrook Plaza.” Prepared by Douglas E. Reynolds, PE, of Gorrill-Palmer Consulting Engineers, certified on October 5, 2005. As there are no revision dates indicated on the plan, this is simply a duplicate of the plan submitted previously.
  - “Planting Plan, Meadowbrook Plaza.” Prepared by Robert B. Metcalf, Licensed Landscape Architect, of Mitchell & Associates Landscape Architects. This plan is dated September 2005, and there are no revision dates indicated. It is not, however, the same plan submitted previously--the proposed landscaping shown on this plan also includes the Dexter site, which was lacking in the prior submittal.

These materials were distributed to the Planning Board members in advance of the October 20<sup>th</sup> meeting.

9. Public notice for meetings on October 20 and October 27, 2005 were sent to abutters of both the Dexter site and Meadowbrook Plaza. The original intent was to review the application for completeness on October 20<sup>th</sup>, and review substantive issues on October 27<sup>th</sup> if the application was found to be complete. At the meeting on October 20<sup>th</sup>, the Board had only 3 members present. This was a quorum of the Board, but would have required a 3-0 vote to pass any motion (per the Planning Board By-Laws). With agreement from the applicant, the completeness review was tabled to the October 27<sup>th</sup> meeting.

*E: A copy of the abutter notification is attached.*

*F: Minutes of the Planning Board's October 20, 2005 meeting are attached.*

*G: Minutes of the Planning Board's October 27, 2005 meeting are attached.*

*H: A video tape of the October 27, 2005 Planning Board meeting is incorporated by reference.*

10. At the Planning Board meeting of October 27, 2005, the Board deliberated the issue of completeness. The Planning Board began by discussing the meaning and intent of the remand order issued by the Board of Appeals on July 13, 2005. The applicant's attorney argued that the only materials required to demonstrate completeness were those pertaining to the off-site improvements on the Meadowbrook Plaza site. The Planning Board questioned this. It noted the fact that the remand order pertained only to the Dexter site, and that the Meadowbrook Plaza site was not remanded. It also noted that the applicant was ordered to provide a complete application based on the Zoning Ordinance in effect at the time the original application was first accepted by the Board. This discussion concluded with the following motion:

As per the Board of Appeals remand, that the Planning Board will review the application for Map 0091 Lot 0008-Y (Dexter site) for completeness under the old Ordinance.

Motion passed 5-0.

11. In accordance with the remand order, the Planning Board used the version of the Zoning Ordinance in effect at the time the original Enterprise Rent-a-Car and Dunkin Donuts applications were applied for. This is the version of the Zoning Ordinance revised as of November 5, 2002.

*I: A copy of §18.1.4.2, as in effect at the time of the original application submittal is attached.*

12. The Board reviewed the application for completeness based on the submittal requirements for a Route One Use Permit per §18.1.4.2. The Board read each subsection, from "a" through "z." For each subsection, the Board voted to determine whether or not each of the required submittals was provided.

13. The Planning Board vote for each subsection of §18.1.4.2, which establishes whether or not the Board found the required materials in the submittals received, was as follows:

- a. provided: 5-0
- b. provided: 5-0
- c. provided: 5-0
- d. provided: 5-0
- e. provided: 5-0
- f. provided: 5-0
- g. provided: 5-0
- h. provided: 5-0
- i. provided: 5-0
- j. not provided: 5-0  
*Existing conditions plan missing items including: water service, vegetation, trees, landscaping, line to septic, building footprint including vestibule and side exit. May be missing electric, cable and telephone.*
- k. provided: 5-0
- l. not provided: 5-0  
*Plan shows approximate location of the on-site septic system, but there is no certification of its acceptance by an appropriate authority. The Overall Plan shows an existing pumping station with a line to the Dexter Building but there is no letter of approval or acceptance from the York Sewer District.*
- m. not provided: 5-0  
*The water main is not shown and there is no letter of acceptance or approval from the York Water District.*
- n. provided: 5-0
- o. provided: 5-0
- p. not provided: 5-0  
*The October submittal does not include any descriptive information concerning signage.*
- q. not provided: 5-0  
*Drawings of the proposed building are incomplete and lack legal certification. Specifically lacking: front elevation, signage, lighting, description of finish materials or siding, color description, and certification by an architect. Building plans don't match the building footprint shown on other plans.*
- r. provided: 4-1
- s. not applicable, therefore complies: 5-0
- t. not provided: 5-0  
*There is no narrative describing how this project satisfies public safety issues. Letter from the Police Department indicates they have not received the revised plan to review, so they did not offer technical comments. Letter from the York Village Fire Chief pre-dates this application's interconnection to the Meadowbrook Plaza, and even pre-dates the inclusion of a restaurant as a possible tenant in the building, so the Fire Department comments are not relevant to the application as now proposed.*

- u. provided: 4-1
- v. not provided: 5-0  
*There is no narrative describing how this project impacts the delivery of Town services or its impact on Town revenues and expenditures.*
- w. not provided: 5-0  
*There is no quantification of net buildable acreage or lot coverage. Submittal does not demonstrate compliance with §6.3.25 and §5.2.4.*
- x. deferred submittal to a later date: 5-0
- y. not applicable, therefore complies: 5-0
- z. deferred submittal to a later date: 5-0

14. The Planning Board found the application for the Dexter site to be incomplete by the following motion: As per the Board of Appeals remand and the Planning Board review this evening (October 27, 2005), that by failing subsections “J,” “L,” “M,” “P,” “Q,” “T,” “V,” and “W” of §18.1.4.2 the applicant did not meet the requirements for a complete application. Motion passed 5-0.
15. The result of the Planning Board’s vote finding the Dexter site application to be incomplete was pre-determined by the Board of Appeals’ Remand Order—the application is voided.

As approved by vote of the Planning Board on the date of November 10, 2005.

Nov 17, 2005      Barrie Munro  
Date                                  Barrie Munro, Chairman, York Planning Board