

**TOWN OF YORK PLANNING BOARD  
THURSDAY, OCTOBER 28, 2004, 7:00 PM  
YORK PUBLIC LIBRARY**

Chairman Barrie Munro started the workshop meeting 7:03 by introducing the Board. Everyone was present: Barrie Munro, Dave Marshall, Glenn Farrell, Glen MacWilliams, Richard Smith, and alternates Tom Manzi and Lee Corbin. Town Planner Steve Burns was there. Patience Horton took Minutes. The meeting was televised. Thirteen motions were made.

### **Public Input**

Selectman Torbert MacDonald spoke as a York resident. Citing 7.8 and accompanying sub-sections, he said that as the York Planning Board approaches the subject of rural areas for decisions about zoning, regulations, and development, it must be remembered that sewer and water can not be extended to areas outside the area between the two rivers and west of I-95 until the area within those boundaries are served. Ponds and dry hydrants shall be constructed in outlying areas (and not waived unless a builder has an alternative) in lieu of those town services. He said that water issues are central to rural zoning.

### **Business**

**Hanson/Verizon 49 New Town Road. Map 92/Lot 21. Public Hearing. Application to construct a 120' tall monopole wireless communications facility ("cell tower").**

Chairman Barrie Munro said that this is first tower review since the new wireless facility ordinance has been in place. Town Planner Steve Burns described the steel monopole proposed by Verizon on the Hanson land near the Maine Turnpike tollbooth, across Route 1 from Eldridge Lumber and the Meadowbrook Plaza, where it probably cannot be seen through trees. Other wireless companies will be coming in with cell tower proposals. The application is complete, and he recommended accepting it.

The project manager, David Valez said he works for Vital Site Services and Verizon, which received an FCC license as part of a 1993 plan for a nineteen-site dedicated network in York County. The other 18 components are on existing towers or co-locations, such as water towers. He showed a chart illustrating the wireless facility locations, including towers. It also depicted areas covered by current service and service gaps. Gaps along I-95 cause dropped calls and poor service. Larger gaps exist along Route 1. He also showed a combination chart of existing service plus proposed service to be provided by the new pole, which will not complete wireless phone service in York, "but is a good start," in that it will fill in most of I-95 and Route 1.

Barrie Munro opened the Public Hearing. Torbert MacDonald asked if this was the last proposal for the York Heights region. Steve Burns said that this pole does not cover the Heights, a location currently without coverage. There is another application coming that

is looking at the Heights, he said. Verizon's David Valez said that his company might address that area in the future, but currently does not plan to do so.

Michelle Moody, part of the team that wrote the new tower ordinance, said the applicant has to show that there are no other options than to put up the tower. David Valdez answered that the system designer had evaluated other locations including the hospital, the police department, and the water department water tower, and ruled them out. Barrie Munro said that the choice of location is designed to cover a segment of Route 1, I-95, and those immediate areas--not to provide service to the Village, the Harbor, or the Beach. He understood that the pole could be heightened. Steve Burns said that another 30-foot expansion, to which the pole is designed to adapt, could be retrofitted on the pole for use of more carriers, but the extension is not Verizon's intention. Glenn Farrell brought up the fence setback, and Rick Boardman of York asked if other carriers would locate on the tower.

System Designer John Chizmar described the two wireless technologies, Cellular and PCS. They have different wavelengths and operate at different frequencies. Verizon is putting in the shorter wavelength system, which can reach through the foliage surrounding the tower. Tom Manzi asked if increasing the height of the tower would allow a greater area to be served. John Chizmar said resulting expansion would allow a slight increase, but it is the nature of the terrain that limits the scope. Michelle Moody asked why there is any discussion of a 150-foot height. The ordinance was written with increased service provided by multiple, shorter poles, rather than large, highly visible poles. All said, Chairman Barrie Munro closed the Public Hearing.

Barrie Munro said that 1.7(d) lists six priorities that relate to the configuration and location of the new monopole. The Board must decide whether or not the applicant is justified in proposing the 6<sup>th</sup> priority. Secondly, 1.8.4 and 1.8(d)(3), dealing with view impacts, require a yes or no decision from the Planning Board. Glen MacWilliams asked of the whereabouts of required visual simulations. Project manager David Valez showed simulated photos from the Turnpike, Route 1, Chases Pond Road, and Radon Road created by flying a balloon to the adequate height in light wind from the proposed site. From most locations, the balloon could not be viewed. The other 18 sites, he said, include 270-foot lattice towers with red blinking lights, strobes, and cables, which Verizon did not build. Barrie Munro agreed that the monopole is the least intrusive, and that, in fact, is why it is specified in the ordinance.

**Motion** Glenn Farrell moved to accept the application as complete for the purpose of review. Glen MacWilliams seconded the motion, which passed, 5-0.

The Board discussed and/or voted on the following series of necessary waivers.

**Motion** Glen Farrell moved, and Richard Smith seconded to waive Site/Subs §6.3.21 and §6.4.20, "contours referenced to NGVD." The motion passed, 5-0.

**Motion** Dave Marshall and Glenn Farrell moved and seconded waiver of Site/Sub §6.3.28, “Show adjacent infrastructure.” The motion passed, 5-0.

**Motion** Glenn Farrell and Dave Marshall moved and seconded Site/Sub §6.3.32, “HISS” (detailed soils analysis). The motion passed, 5-0.

Barrie Munro asked the applicant to discuss the next waiver request, Site/Sub §6.4.16.1, “Stormwater Management Plan.” Dave Valez said that a gravel driveway leads onto the Hanson property. Sebago Techniques, the company improving the site, plans to turn a deer path/trail into a well-drained non-gravel road. Glen MacWilliams said he sensed that the new portion would not impact New Town Road. Dave Marshall said that Town Engineer John Treat should review the plan. Verison’s attorney, Bill Fletcher, said that the approval should be on the condition of subsequent approval of the road.

**Motion** Glen MacWilliams moved the that waiver for Site/Sub 6.4.16.1 be granted subject to John Treat’s review and approval of the drainage plan. Dave Marshall seconded the motion, which passed, 5-0.

**Motion** Glenn Farrell moved to waive Site/Sub §6.6.28 “Cost Estimate for Erosion and Sedimentation Control” with the understanding that Code Enforcement must acknowledge the permit. Glen MacWilliams seconded the motion, which passed, 5-0.

The fence was discussed. Town Planner Steve Burns said that setbacks are measured at the fence, which is to keep people out. If the tower falls, it will fall on the fence.

**Motion** Glenn Farrell moved to approve the setbacks for the fence as shown on the plan. Lee Corbin added the language, “as the manufacturer provided.” Dave Marshall seconded the motion for purpose of discussion.

Steve Burns said that the setbacks could be reduced, if the tower can collapse to a smaller area. The top 38-½ feet is designed to break in certain circumstances. Barrie Munro asked if there is a safety issue for any abutter. Steve Burns said that there was not an abutter problem.

**Vote** The motion passed, 5-0.

The landscaping was discussed. Steve Burns described the mature stand of trees that provides adequate visual buffering.

**Motion** Glen MacWilliams moved, and Glenn Farrell seconded, to accept the visual buffering, as it exists. The motion passed, 5-0.

A general discussion followed about what York’s future wireless communication needs might be. Glen MacWilliams said that the issues of additional towers and appropriate coverage for areas like the Harbor and the Beach are not the immediate concern. Dave Marshall said that the limitations of 120 feet heights would necessitate more towers

around town. Glenn Farrell said that with technology changing, in 10 years there might be a frequency that will allow more co-locations and less innocuous ways to provide a signal. Lee Corbin asked if the second pad illustrated on the plan was for a second tower. Dave Valez answered that instead, it is for base equipment. He said that Verizon is not proposing another monopole. In the future, co-locations might be possible.

Barrie Munro briefly reviewed the Findings of Fact in Section P. Glenn Farrell asked how the pole would be illuminated. Dave Valdez said that it did not have to be lit, because of its height. Barrie Munro asked about the color. Construction Manager Bob Hogan said that the monopole is of a galvanized gray metal, the patina of which, with time, will cause it to blend into the sky. Barrie Munro asked Glen MacWilliams about certifications. Glen MacWilliams said that the certifications were adequate.

**Motion** Glenn Farrell moved to approve the Plan and the Findings of Facts after the waivers have been added, the road drainage design has been approved by the Town Engineer, and the soil and erosion/sedimentation control as been approved by Code Enforcement. Dave Marshall seconded the motion.

In discussion, Tom Manzi said that since the applicant has not presented the worse case scenario by comparing this to the existing towers, the public has no idea how bad this tower could have been. He then gave credit to the people who created the new Tower Ordinance and to Verizon, for fulfilling the requirements.

**Vote** The Chairman called the vote approving the plan. It passed, 5-0.

At Barrie Munro's request, Steve Burns explained that to find the cell tower ordinance on the Internet, go to [www.yorkmaine.org](http://www.yorkmaine.org), pull down "Planning," then "Land Use Codes," and then the "Wireless Facility Land Use Codes."

**Public Forum on Rural Zones.** The Board will initiate work on a project to establish rural zoning districts in York. The Town Planner will base the discussion on a draft Project Scoping Report prepared. That Report explains the need for the project, lists articles of the Zoning Ordinance that will need to be amended, and compares the rural zones at once. This document can be accessed at [www.yorkmaine.org](http://www.yorkmaine.org) by looking under "documents posted for public hearings" on the Planning Department's page. Anyone interested in this issue is strongly encouraged to participate in this discussion this evening, and in the project throughout the coming year.

Steve Burns handed out his document, "Project Scoping Report, Establishing Rural Zoning Districts, Draft, October 15, 2004." He described the new zoning project for rural areas as a deliberate process, more so than at an earlier time, when the dialogue did not work. He included a timeline for targeting specific dates for properly taking action, a timeframe imposed by the Town. He described his cutting and pasting of the Comp Plan and Zoning Ordinance to help understand what needs to be amended. On the last page of the document, he had outlined how to approach the vote. He asked the Board if the poli-

cies presented were generally the right ones to pursue. He said he did not want to work on any of it until the Planning Board agrees that it is the right thing to do.

Chairman Barrie Munro opened the Public Hearing. Torbert MacDonald put a zoning map from 1975 on the easel, saying that the configuration of zones then was similar to the four-part rural zones being proposed. He stressed the importance of completing the Resource Inventory & Analysis chapter of the Comp Plan before approaching rural zoning, and he recommended giving Steve Burns a year to do so before undertaking the zoning change. He suggested approaching the rural zones by the influence of the watershed analysis, rather than through geo/political information. He specifically recommended the conservation strategies suggested by the Wells Reserve as a better basis than traditional zoning approaches.

Michelle Moody said she had viewed information about rural zoning on the Town's website. She appreciated the ideas of working with the northern area first, along with the matter of home occupations. She commented that the western side of I-95 has to be protected from Wal-mart and similar endeavors.

Glenn Farrell asked what would happen if the public input is different than what the Comp Plan requires. Michelle Moody said that if it will not go through the way it is, work would be needed on the Comp Plan. Barrie Munro said that when detail in the Comp Plan is put on the table, the Board will be able to see what the objections are and then deal with them. Glen MacWilliams said that the effort to raise public awareness is good. The Natural Resource chapter is the first work priority. Everything is based on the land and land use policy.

David Tibbitts of the York Conservation Commission said that the highly diverse natural resources (York has the highest biodiversity in Maine) should be a large concern in zoning. The huge variety includes fresh water ponds, salt-water habitat, wetlands, vernal pools, amphibious and reptile habitat—information about which should be critical to making zoning decisions. He recommended using the reference book, *Beginning with Habitat*, which he held up.

Rick Boardman asked what the need for the new zoning is, calling the current districts "onerous." Is this how the Board should be spending its time? Glenn Farrell answered that there are possible uses, like heavy industrial, that are not wanted, but are allowed. Barrie Munro said another reason zoning is being approached is because it is the first item and highest priority in the Comp Plan. Steve Burns said that the first Comp Plan, from 1970, lasted 10 years without change. The second one, 1980's, lasted 20 years. This Comp Plan, which the town has had since 1999 has many changes amended, and more are coming. "And that is what we should be doing."

Tom Blaisdell of South Side Road said that he hoped the Town would move forward on the rural zones without impinging on individuals' rights. He saw the Comp Plan as a guide without specifics for improvements. He thought zones should be voted upon individually and different allowable uses should be listed for different types of zones. He

admitted that he is biased toward farms. Open land and landowners' abilities to make economical return with diverse uses are a priority. As it is, field after field gets lost to housing because of the expense of keeping the land.

Rick Knight said in his travels, he saw an apple farm that also had a cranberry bog. A recreational facility could be shared with a farming enterprise. He explained his logic against allowing a minimum of three acres lots in the Pine Hill area: elsewhere, four acres can have two houses, but when three acres goes toward one lot, it is taxed for more than the average 2-acre house. He talked about the need for home occupation, especially with the threat of the Navy Yard shutting down. He suggested allowing additional buildings for home occupations, so people can get the stuff out of the yard (he used his own place as an example) and into the building.

John McNellas of Cape Neddick said that he appreciated the Planning Board's effort, calling York a pretty town that he hated to see changed a lot. Don't make it like Wells, he said. When no one else spoke, Barrie Munro closed the Public Hearing.

**Natural Resources Chapter. Status Report on work to date on this chapter of the Inventory and Analysis Section of the Comprehensive Plan.**

Barrie Munro said that the requirement for the Inventory and Analysis was a State growth management requirement. The chapter about York's natural resources will be ready by November, 2005. Steve Burns said the economic chapter might be completed by then, also, if there is time. He said that GIS Manager Brett Horr was currently working on the Utilities chapter. Steve Burns said that parallel work on the Comp Plan and ordinances had been ongoing. Barrie Munro said that the priority list must not be reneged.

Glen MacWilliams suggested dovetailing land use patterns with natural resources to determine how they all come together. Steve Burns said that home occupations have to be a separate block, so it can go forward, even if the zones fail. Richard Smith said that Zone 4 does not have much to be worked on, to which Barrie Munro agreed.

Steve Burns described the complicated research involved in compiling the data for the Natural Resources chapter, including researching statutes, compiling digital topographical information, and the need to purchase a radar topo. As well, geology, soil topography, water resources, land resources, and geology draft maps have to be included. He had looked into texts from old ordinances and had spoken to geologists about how water travels through different kinds of rock for wells and drainage, and though it never occurred to him that such information would matter, he could see, at this point, how it does. He was getting help with soils analysis. His diversified research has included the subjects of islands, coastal barrier resources, beach erosion, habitat, Lyme Disease and West Nile Virus, the game preserve, marine resources, the status of air quality by State and Federal controls (not Town), Mount Agamenticus, and scenic resources. Ultimately 20 or 30 maps will be compiled to communicate the information well.

Glen MacWilliams said he saw how it could take a year.

**Blue Star Mall/Atlantic Place. Review approved plans and as-built plans for this site.**

Chairman Barrie Munro opened by stating that a letter from Town Planner Steve Burns, dated 22 October, 2004, had been sent to Duane Jellison of DLJ Group, inviting him to attend the October 28 review of the as-built plan for Atlantic Place in order to document the field changes and approve the plan as revised. In the finished building, Barrie Munro continued, the elevation of the first floor is different, the parking lot has changed, and the retaining walls have shrunk. The change was certified by a professional engineer, as documented by a Memo to: John Treat and Steve Burns, From: Anderson Livingston Engineers, Dated: May 14, 2004.

Attorney Greg Orso spoke for DLJ Group, which built and owns the property. He said that field changes are made by far more than a majority of the builders, and the process to follow for changes has been the same for the past five years. Stamped changes go to Steve Burns or John Treat, and there is no intent from developers to hide anything. There is just an effort to use the process to do minor field changes in an expeditious manner. A re-review, like this, doesn't fit in. It seems like a violation when six or eight months later, the Planner says that that is not how change should be done. He referred to the May 14 Anderson Livingston Memo, saying that it represents the changes. He also said that Glen MacWilliams was rehashing issues and should not be voting on the matter, as he brought it forward as a private citizen during the Public Hearing at the October 14 Planning Board meeting. But, according to the process of the past five years, no one from the Town has a problem with what happened. Every one knew what was going on.

Glen MacWilliams said he had addressed Planning Board as the citizen, and he reserves the right to be part of the Board. He was one of the members who wrote the memo about new field change procedures in September. It asks the applicant to show the Board changes and seek approval. The as-built plans that had been presented that evening, Glen MacWilliams continued, were the same ones he saw weeks ago. They did not and still do not include an architecture plan nor a landscape plan, both of which should have shown changes. Those two plans have an impact on whether the Planning Board can review the design. Though the applicant indicates those plans are minor, they are major, and that is why DLJ was called on to attend the meeting.

Richard Smith said that DJL had followed the process as it was established in the past. The Board is better to let this one alone and start with the new procedure "tomorrow." Dave Marshall said that the Board is figuring out what it needs to do to go forward. Town officials had the authority to change plans that were approved by the Board. In this case, the elevation and the changed retaining walls were changed. The setback had been a big issue during the application process. Town Planner Steve Burns summarized the problem, saying that when a town employee looks at a situation and signs off, and the Planning Board does not know the latitude of the change, should the Planning Board have to have anything to do with the builder? What does it do going forward?

Attorney Greg Orso said calling the builder back in is not part of the subdivision regulations. He called it inappropriate. Code Enforcement has the purview. When the Town says that everything is done, and then the Planning Board says the process has changed, it is not fair.

Tom Manzi said that the Town's process lacks continuity. He called this event an exploration. Lee Corbin said that what occurred was an "engineering booboo" catapulting into several changes, including a height of the floor elevation, which should have been brought to the Board's attention at the time. However, the Board cannot rake the applicant over the coals, she said. She then read from the earlier applicant, Verizon's, cell tower plan, where it said that design and visual appearance changes would be brought to the Board. That way the Board can approve or deny the changes, she said. Barrie Munro said that that wording had come from the Board's September 24 Memo. The Planning Board is not an expert and always relies on the expert, he added. Glen Farrell said that the Atlantic Place building is the same, except 1 ¾ feet higher. Once the official signs off on it, you would never hear the builder say, I want to go back to the Board. If this application needs approval at this point, after it has been built, then what about all the others in the past? Dave Marshall said that the Board should not approve changes. Lee Corbin agreed that the Board should take no action. Tom Manzi agreed that taking no action was best.

Dave Marshall asked about the stair changes. Covered stairs were moved to a different location in the front to accommodate the heightened floor. Glen MacWilliams noted that stairs were added to the back of the building. Barrie Munro said that raising the building had created the need for those stairs, asking if adding them to the building plan could make Board members happier.

Glen MacWilliams said that all that is available is the engineering design, not the architect design nor the landscape design. The Board should see all three designs. Dave Marshall asked if the basement could be considered space for retail activity. Glen MacWilliams said that the space couldn't be designated as storage, as it accompanies the use of the upstairs space. Parking must be based on the entire space. Barrie Munro said that that policy could not be held against this applicant, because the Planning Board has never done that before. Glen MacWilliams said that the Board had based parking on a 5,000 square foot building, not 10,000 square feet. Dave Marshall said that the Board accepted what the builder asked for with parking. It was signed off, and it was okay. The Planning Board should take no action against the applicant. Tom Manzi asked for clarification about storage as part of the formula for parking. Steve Burns said it had not been included.

**Motion** Glen MacWilliams moved to table the matter until the Board has a complete set of drawings on which a decision can be made about approval. No one seconded the motion.

**Motion** Dave Marshall moved that the Planning Board take no further action on this item. He also moved to schedule a continued discussion on the policy. The motion

passed 3-1, with Glen MacWilliams opposed, and Glenn Farrell abstaining because he was not present for the original hearing or vote.

Greg Orso asked for assurance that everything is accepted as submitted. Chairman Barrie Munro assured him that he would not be called back in next month. Barrie Munro said that the discussion would be continued at the early November (11/4/2004) meeting.

### **Other Business/Adjourn**

Steve Burns said that applicant TAGT lobster pound wants to delete 3 exterior pedestal lights and instead attach fixtures of the same wattage on the side of the building. Barrie Munro said that it would change the decorative value of the building and not to permit it.

In other business, Steve Burns said that the Lighthouse Restaurant had been demolished, and that driveway pavement remained on the lot that is slated to be built last. The applicant had asked to keep the paving on the land to preserve the soil from eroding, until the time comes to build. The Board agreed it is best to keep the paving.

**Motion** Dave Marshall moved to grant the waiver allowing the pavement to stay in place until the lot is reading for construction. Glen MacWilliams seconded the motion, which passed, 5-0.

In other business, Steve Burns said that the owners of the Cape Neddick Village property have asked to begin early site cleanup work to get rid of junk left over from the trailer park and some old trees.

**Motion** Glenn Farrell moved to approve site cleanup work. Richard Smith seconded the motion.

**Amendment** Glen MacWilliams made the friendly amendment that the applicant should identify the extent of the cleanup to manmade materials, debris and dead trees. Glenn Farrell accepted the amendment.

**Vote** The motion passed, 5-0.

Steve Burns had handed out the Consent Order in Inland Golf Properties, Inc., vs. The Inhabitants of the Town of Wells. At a special town meeting on December 17, 2004, the voters will decide whether to enforcement of the Residential Growth Management Ordinance, which is being contested.

The meeting adjourned at 11:10.