

TOWN OF YORK PLANNING BOARD
THURSDAY, JULY 14, 2005, 7:00 PM
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Chairman Barrie Munro began the meeting at 7:10. All the 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 introduced the members of the board and the staff.

Steve Wood of the Highland Farm application arrived early and had his Mylars signed.

Annual Organizational Meeting

Section 2.3.1 of the Planning Board By-Laws requires the Board to elect a Chair and Vice-Chair annually, at the first regular meeting of the Board on or about July 1st.

Tom Manzi nominated Barrie Munro as Chairman. There were no other nominations for chairman. The vote was 4-1, with Glen MacWilliams opposed.

For Vice Chairman, Glenn Farrell nominated Richard Smith, and Tom Manzi nominated Glen MacWilliams. There was a secret ballot on folded paper, which the recording secretary tallied. Glen MacWilliams won with a 4-1 vote.

Public Input

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

Stan Moody of the York Conservation Commission explained that the commission feels that Code Enforcement has interpreted the Shoreland ordinance for separation distances for septic correctly for many years, until the application of a recent applicant used a different interpretation. The Conservation Commission has changed wordage in the ordinance to assure the ordinance will be interpreted as it was in the past. The exemption for lots of record that protects certain lots from being “unbuildable” is located elsewhere in the ordinance, but it still exists, he emphasized. Stan Moody asked the board to rescind their vote and use the wording of Draft 5 of June 8, 2005.

Minutes

Review and approval of draft minutes.

The June 9 and June 23, 2005, minutes were reviewed.

Motion Glenn Farrell moved to approve the June 9, 2005, as written. Glen MacWilliams seconded the motion, which passed 5-0, with all the members who attended that meeting voting.

The June 23, 2005 Minutes were reviewed. Glenn MacWilliams said that attaching a copy of his document titled Resolution to the end of the Minutes, rather than relying on the recording secretary's summarization of the document, would more accurately preserve the concept of the Resolution he had presented to the board on June 23. Michelle Moody asked that the second use of the word "defined" be removed from Helen Winebaum's testimony on Page 4. Michelle Moody also pointed out that on the last page, the word "occupation" should be "occupancy."

Motion Glen MacWilliams moved to accept the June 23, 2005, Minutes as amended. Glenn Farrell seconded the motion, which passed, 5-0.

Applications

Dead River Company. 464 U.S. Route One Map 48/Lot 25. Public Hearing. Application for Route One Use Permit to enclose the existing gas station's propane filling station to provide for tank storage.

Paul Famulari, Branch Manager from the Dead River Portsmouth office, said that he intends to fence in a 30 X 35 foot area, remove the existing asphalt, and replace the asphalt with concrete. Twenty to twenty-five new, empty propane tanks will be stored inside the fenced area. The large tank that is already there will be used for filling the small, empty tanks. The terms for the tanks are "pigs and piglets."

The Chairman asked for a motion to open the Public Hearing, which Tom Manzi so made, and Glen MacWilliams seconded. There was no one to speak to the application, so the Public Hearing was closed.

Steve Burns said that the plan does not change the impervious surface area or any setbacks. The fence design and the probable request for a Fire Chief signoff are the issues that brought the matter before the board. Tom Manzi asked about Code Enforcement's involvement in issuing the permit. Steve Burns replied that Code Enforcement felt that this matter was Planning Board jurisdiction. Lee Corbin suggested that the application constitutes an expansion of existing use. She was also concerned about how a chain link fence will not provide screening from neighbors and the roadway.

Applicant Paul Famulari explained how a 3-foot gate and a 5-foot gate would allow the workers and tanks to get onto the fenced-in site. The tanks will arrive in a pick-up, not a semi. Slats of green plastic in the fence will make the fence a screen. Tom Manzi asked if the piglets will be clean (empty). Paul Famulari answered that they will be brand new, and traded-in ones might have up to 5% gas in them. Barrie Munro asked the board about the exterior storage regulations. Glenn Farrell said that the ordinance says that what is stored outside has to be screened. Michelle Moody said that Route 1 has the strictest appearance ordinance in York. She asked if something more aesthetic than chain link be used. Glenn Farrell said that chain link is preferred over wood, in case of fire. Paul Famulari said that BOCA requires chain link. Tom Manzi asked about fire suppres-

sion mechanisms, as found at filling stations. Paul Famulari said that security is the main concern. His company is not introducing any more gas than what is already there.

Motion Glenn Farrell moved to approve the plan, conditional to the applicant putting the fence up, making the site more visually appealing, and receiving a sign-off from the Fire Chief. Richard Smith seconded the motion.

In discussion, Lee Corbin suggested the applicant put in a minimum of five planters next to the fence. Barrie Munro described the planters as three to four feet tall above the level of the soil of the container. The suggestion was agreeable to Paul Famulari.

Vote The motion passed, 5-0.

Sohier Park. 11 Sohier Park Road Map 29/Lot 20. Public Hearing. Application to the Planning Board for consideration of a re-design of the park.

Steve Burns had handed out a Memo to the Planning Board dated July 7, 2005 containing recommended actions that included Conditions Precedent and Conditions Subsequent, as well as a list of 8 issues.

Tom Coles of Richardson & Associates walked the board through the plan and described proposed improved vehicular and pedestrian circulation, as well as an increase to the aesthetic appeal of the Sohier Park. He pointed out access to the gift shop, parking, a place for bus drop-off, sidewalks, and viewing platforms.

Glenn Farrell and Tom Manzi moved and seconded to open the Public Hearing. Stan Moody of Cape Neddick said that this plan is better than the prior one. He noted that there was quite a bit of green on the plan, and he did not know how grass would keep growing, with so much traffic there.

The Chairman closed the public hearing. Town Planner Steve Burns said that the extension of sidewalks to Nubble Road and the possible elimination of an overhead electrical wire were decisions for the Planning Board to make. The parking setback of 50 feet had been granted the last time the application was before the board (June 8, 2005). Glen MacWilliams commented that preservation of the integrity of the park was the chief concern.

Motion Glen MacWilliams moved to accept the structure setbacks as shown on the plan. Tom Manzi seconded the motion, which passed, 5-0.

Tom Manzi commented that the land is more of a parking lot than a park. He said it is the antithesis of a park, because people go out there and look out from their cars, without getting out.

On the plan, Steve Burns pointed out where the sidewalk extension would go out to Nubble Road. Richard Smith said that having quite a bit of traffic warrants sidewalks. Steve

Burns pointed to the area for overflow parking has reinforced turf, which is one of the Issues on the Memo. Applicant Tom Coles said that the turf is constructed in layers. It reinforces the ground and is totally pervious. Lee Corbin asked if there are statistics about pedestrian accidents in the park. She also commented that she liked the rural-ness of the area. Chairman Barrie Munro asked Parks Director Michael Sullivan to come forward and answer questions. Michael Sullivan said that many people walk into the park from Nubble Road, but there have been no pedestrian accidents there.

Motion Glenn Farrell moved to require the sidewalk, and if parking would fit into that area, as well, that would be acceptable. Tom Manzi seconded the motion.

The board discussed the possibility of parking on the north side of the street, an idea that did not go far. Michelle Moody said that she is against the reinforced turf parking area.

Vote The motion passed, 5-0.

The discussion about Issues Item 4, **Underground Wire**, began with Steve Burns showing the wire's location on the plan. It hangs directly over the parking area behind the Visitor's Center. Applicant Tom Coles said that burying the line would improve the appearance of the park, but be cost prohibitive. Michelle Moody suggested the Park Association might be able to raise funds for it separately. Glenn Farrell agreed that it would be unfair if the Planning Board demanded burying the line.

Tom Manzi said that as far as aesthetics go, he would rather see money to into a different blacktop.

Item 5, **Municipal Vehicle Parking**, led to discussion about one parking spot near Fox's Lobster Pound being reserved for emergency purposes. Tom Coles said that appropriate signage would in place to reserve that spot. For Item 7, **ADA Compliance**, applicant representative Andrew Nowacki said that all of the proposed sidewalks are compliant to the Americans with Disabilities Act requirements. Regarding the **Floodplain** (Item 8), Steve Burns said that the plan appeared not properly delineated. He had requested the applicant to address compliance with the Floodplain Management Ordinance.

Tom Manzi asked if there could be any consideration of different textures, pigmentations in the blacktop, or alternative striping strategies that might make the park look less like Hannaford's or something on Route 1. Tom Coles replied that there had been no additional thought to an alternative, but that options, such as brick inlay, can be looked into. Michelle Moody said that a town committee mandates the work, and this might not be the right timing for changes because of their funding.

Glen MacWilliams said he would not disagree with making a more beautiful parking area, and thought that the architect should be asked for feedback about the possibilities. Glenn Farrell pointed out that the voters are not going to make pavers a priority. Barrie Munro wondered if a letter should go to the committee about their considering beautification of the road. Parks Director Mike Sullivan said that the committee would entertain

any suggestions. Chairman Barrie Munro asked Tom Manzi and Glen MacWilliams to combine efforts for a plan note that will detail the recommendation.

Motion Tom Manzi moved to approve the Sohier Park application as discussed (including the sidewalk extension, a parking sign for the emergency vehicle parking space, proof of floodplain compliance, and an additional plan note about improving pavement aesthetics) and as presented with the four Conditions Precedent, which are:

- 1) Town Engineer's approval, which may include resolution of minor technical details
- 2) Department sign-offs on the Mylar: York Police Department, York Village Fire Department, and York Public Works
- 3) Add a plan note that specifically lists the two Conditions Subsequent
 - a. Condition Subsequent 1) Approval of the Board of Selectmen is required per Zoning §4.2.2
 - b. Condition Subsequent 2) Approval of the Legislative Body is required per Zoning §4.2.2.
- 4) Applicant reimburses the Planning Department of the actual cost of Aquarion Engineering's review of the application

The Motion was approved, 5-0

York Village Business Center. 14 Cider Hill Road (Route 91) Map 53/Lot 9. Public Hearing. Continued consideration of Preliminary Application for a Route One Use Permit and condominium conversion for a mixed-use commercial development.

Applicant representative Jim Hanley of Engineer Alliance began by updating the board on ongoing key issues, including traffic, about which he was waiting to hear from DOT, and a revised drainage report sent to Steve Bradstreet. Town Planner Steve Burns said that the State indicated that it would be Spring of 2006 before construction starts on Route 91. The State's construction activities tie in with the York Village Business Center project closely, he said.

Jim Hanley discussed the visual impacts of setbacks and bufferyards. Pavements have been revised to meet the standards of the regulations. There is a proposed sidewalk from the Mandarin Restaurant to the York Village Business Center's main building, as well as cross walks and stop signs. There will not be a four-way stop inside the complex. Rather, there will be stop signs at the accesses to the parking lanes. He told Steve Burns he would get him a copy of the Maine DOT drainage study, which he had gotten. Apparently the drainage pipe at the heart of the problem does not discharge. He described a proposed plan to run the water to a DOT pond farther down stream. Cleaning swales will also be necessary. He also talked about the possibility of striping off the edge of Route 91 to use as a sidewalk. He talked about moving the Business Center driveway closer to proposed bank driveway on the Route 91 side. He said that the prior problem with the 19-car parking lot facing Route 1 had been resolved by making it for 10 cars, instead.

Barrie Munro opened the Public Hearing. Abutter Scott Franklin said that he had the same concerns as before, plus some new ones. He asked for a breakaway fence at the Route 91 exit, limiting the roadway to emergency traffic only. He inquired about wooden fences around his property and his sister's property. He asked for tall trees between his house and the hotel. He asked if his sister would lose land if a sidewalk goes across it, as in eminent domain. Glenn Farrell answered that land cannot be taken away from her. The sidewalk will either be on a right of way or on town property. Scott Franklin was concerned that his sister might be required to shovel the sidewalk, which would not be possible for her to do. Glenn Farrell assured him that the Town of York does not require property owners to shovel the sidewalks on their property.

The chairman closed the public hearing. Going over the table created to calculate shared parking, Michelle Moody said that she was not sure if the math was correct. She asked for a professional review to explain the numbers. Jim Hanley said that she had a May 5 chart, and that the July 11 chart had been revised and corrected. Lee Corbin pointed out that the number of hotel rooms was still incorrect from the last review. She had commented that calculating by 80 rooms, rather than the incorrect figure of 100, would lend more leniency with the parking count. Jim Hanley said that the oversight would be noted.

Addressing abutter Scott Franklin's comments during the Public Hearing, Steve Burns said that it is impossible to make the Route 91 roadway for emergency vehicles only. Glenn Farrell agreed that two accesses are important. Barrie Munro commented that fences on the backsides of the houses are not on the plan. Jim Hanley answered that he is in favor of the fences and will put them on the plan. Barrie Munro asked about the mature tree Scott Franklin's father had planted perhaps on the wrong side of the property line. Barrie Munro and Jim Hanley discussed the probable location of the tree on whichever property, but Glenn Farrell said that the applicant is not changing anything within 10 feet of Scott Franklin's property, so the tree is safe.

Michelle Moody brought up the probability that the applicant, whose hotel will be in sight for cars passing on Interstate 95, might want to put an advertising sign on the side of the building. Barrie Munro asked for a photograph of the site from Route 95. He commented that there is a wetland back there.

Scott Franklin came forward again to get an answer about the tree size that will buffer his house from the hotel. He asked if it will be a two- or three-story building. Jim Hanley replied that the building will be 35 feet tall. Scott Franklin said it might take decades before small trees grow up to give him screening. He said he does not want people on the second story to look into his back yard. Michelle Moody said that there is a balancing act between the survivability of big trees and smaller ones. The bigger ones are less apt to grow.

Lee Corbin said she was concerned about the traffic coming down Cider Hill Road that might use the diagonal cut through the Business Center instead of going down to the corner to turn right. Steve Burns said that a traffic study had shown that the majority of cars

turn left. Jim Hanley said that he has already analyzed the safety of the traffic pattern. Barrie Munro said that he would like to see something about the internal traffic pattern at that property.

Michelle Moody brought up the drainage issue. She said that drainage improvements that were done in the past were not maintained. She asked who would be responsibilities for these new drainage improvements in the long run. Barrie Munro said that there would be a requirement relative to their maintenance. Jim Hanley said that there will be a maintenance agreement in place, and maintenance will be like any other road in town.

Tom Manzi asked about the lack of architectural elevations. A visual concept of the property has never been presented. Steve Burns explained that the elevations have been deferred, and Barrie Munro said that all the information will be provided for the final stages.

Steve Burns said that the project has been tied into the Route 1/Route 91 improvement drainage plan that the State has been dragging along. Drainage is the York Village Business Center's biggest hurdle. Jim Hanley replied that the drainage improvement schedule can be overcome. His group can work around the delay. Glen MacWilliams commended the applicant for the changes and improvements they have made.

Motion Glen MacWilliams moved to approve the preliminary plan as submitted, discussed, and amended this evening. Glenn Farrell seconded the motion, which passed 5-0.

Marketplace/Bayberry LP. 401 U.S. Route One. Map 53/Lot 2A. Public Hearing.
Conceptual review of a proposed 2-phase 22,000 s.f. commercial development.

Project architect Mike Lassel showed a plan of the area around the Route 91/Route 1 intersection and corridor. He described the proposed buildings as up close to the road, as opposed to Cottage Place, which is set back, and there would perhaps be a restaurant, a bank, a spa, and eight apartments developed for people who work. To make this possible, the applicant will have to ask for an increase in housing-per-acreage, perhaps making Affordable Housing. He talked about the traffic and circulation, a 40-seat restaurant, and second story apartments in the north building where the restaurant would be. He described glass fronts on the Route 1 side of the structures and berms along the back of the property.

Engineer Mike Livingston showed wetlands on the property. An area near the main driveway would require wetland fill. He proposes creation of a series of ponds on the property connected by culverts to drain the property. The water will stop at a final pond. Connecting the parking between this property and Cottage Place, next door, will require taking a couple of unused parking spaces from the parking lot there, which he said is agreeable to Cottage Place.

The Chairman opened the Public Hearing. Abutter George Moore of Orchard Farms said that he has swales on three sides of his house. The land there is so mucky, he sinks down

when he walks there. He had talked to Public Works Director Bill Bray about it. They had thought water was going through a certain culvert, but it is blocked up. Bill Bray told him that the water is coming from the Marketplace land. It is creating a swamp, George Moore said. He is opposed to any project that will cause additional water problems in the Orchard Farms area.

Abutter Walt Ziobrowski said that in 1998, “materials” were stored on the Marketplace site. As it settled, it disrupted his house to the point where his house would shake when a truck went down the road. The material was shot rock that came from hospital construction. The rock was since removed from the Marketplace property. He repaired the house, and it is fine. Water makes his house unlivable. He said that the entire Marketplace site was backfilled when the shot rock was removed. If the fill is there without a permit, they should maybe take it out, he said. There used to be skating on that area. He pointed out the pond area, the tree area, and the area that has been raised 5 feet. He described pine trees that have died from too much water.

Abutter Paul Stocks said that he lives at the bottom of property where everybody says the water is flowing—and they are right. On the plan, he showed the location of his pine trees and a culvert that runs under his property out to the street. The roots are now showing on the pine trees. He hopes they don’t fall. There is more water now than there was two years ago. He suggested that if a berm goes onto the Marketplace property, it should be five or six feet high, because the headlights on taller cars are so high.

Abutter Paul Ford described how water in that area runs toward the river. He said there is a plan in the works for fixing the problem. He knows another house that is constantly flooded. Its sump pump is on 24-7 and has a battery back-up.

Stan Moody of Cape Neddick said that whether or not the fill is historic is the main concern. He criticized the idea of designing a building with a window-wall facing the street, saying that it is not very New England. He said that the Planning Board has little leeway in granting increased density.

Michelle Moody commented that the huge issue is whether the fill into the wetland was legal or not.

Applicant Paul Fowler said that there is a Town of York building permit from 1996 to fill the property and bring it to road level. Steve Burns said that there was a non-beach wetland standard that once may have allowed the whole lot to be filled. He was not sure that the site was in compliance. Barrie Munro said that the fill issue and the drainage issue are the showstoppers. Glenn Farrell said that he was not sure if they can make the ponds they described for the drainage sequence.

Mike Lassell said that idea of having the second floor built as shell space is one the Town should think about. Glen MacWilliams said that he likes the overall concept. The hydrology of the site is an issue the Planning Board cannot let go of. Steve Burns said that the applicant first has to find out if the fill was legal or not. The question is whether or

not historically it is in the Wetland Overlay District. Barrie Munro asked for a soil survey and hydro-geological study.

Other Business/Adjourn

Chairman Barrie Munro led a conversation about the board's Privilege to Executive Session. Steve Burns read the statute about Executive Session aloud. Barrie Munro said that it pertains to the board's ethical policy. He recommended that they create the ability to go into Executive Session. Michelle Moody said that she thought they had to have an attorney present in the session. Steve Burns re-read the section that described "consultation between the body and the attorney". Michelle Moody also thought the Planning Board has to have an okay from the Selectmen to do so. Barrie Munro said the reason an Executive Session might be necessary would be that members might have to be recused for one reason or another.

Glen MacWilliams said that the Charter empowers the board to have Executive Session. He handed out his Memorandum to the York Planning Board, dated July 11, 2005. Barrie Munro said that the board could adopt an ethics document as part of its bylaws.

Motion Glen MacWilliams moved to adopt the Town of York's Selectmen's ethics policy as part of its bylaws. The motion was not seconded.

Steve Burns said that he would put it on the next agenda. Barrie Munro asked Tom Manzi and Glen MacWilliams to form an ad hoc committee. Lee Corbin said that the recused person should have the right to stay in the room as a member of the general public. Tom Manzi said that a board member in the audience has the opportunity to influence from the audience, and then the conflict of interest is apparent. Barrie Munro said that the board does not have a means of censoring a member.

Glenn Farrell asked that in the future, written material, like the Memo from Glen MacWilliams just handed out minutes before, is distributed earlier in the meeting than this was, or before the meeting, so it can be reviewed. Michelle Moody said that she wondered if the Planning Board can take disciplinary action, or if it can only come from the Board or Selectmen. Barrie Munro said that he wants to make it part of the bylaws.

In Other Business, Michelle Moody spoke about what Stan Moody had said at the beginning of the meeting (Public Input) about interpretation of the septic separation distances, Lots of Record, and a change of language in the ordinance amendment. Steve Burns said that the Planning Board should give the change to the Selectmen at the August joint meeting.

Glenn Farrell said that he thought a legal opinion should be sought over the ethics policy/Executive Session matter.

Consensus Chairman Barrie Munro polled the board members individually, asking if a legal opinion should be sought about the right to Executive Session. Everyone agreed that it should be sought except Glen MacWilliams, who was opposed.

The meeting adjourned at 11:20.