

**TOWN OF YORK PLANNING BOARD  
THURSDAY, FEBRUARY 12, 2004, 7:00 P.M.  
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Chairman Glenn Farrell started the meeting at 7:00. Dave Marshall, Barrie Munro, Dan Remick, Glen MacWilliams, and alternates Richard Smith and Tom Manzi attended. Town Planner Steve Burns represented the Planning Office. Patience Horton took Minutes. The meeting was televised. There were 6 motions made during the meeting.

**Minutes Review and approval of draft minutes.** The January 8, 2004, Minutes were fine. Glen MacWilliams corrected the last two sentences of the first paragraph on P. 4 of the January 22, 2004, Minutes. A vote was not taken.

Helen Rollins Lord asked questions about licensing developers. For some issues, she was referred to the Selectmen, and for building standards, she was told to communicate with Code Enforcement and ultimately Town Manager Mark Greene, if enforcement does not come through.

Rick Boston identified himself as an original intervener in the CMP transmission lines project. He was also one of the final signers. He described the effort that went into it the project and the giant concession that was made in connecting the wires to the bridge. He urged the Board to go along sign the permits for CMP.

**Applications**

**Vesting of Cape Neddick Corner Subdivision. 1318 U.S. Route One.** Map 97/Lot 9. Public Hearing. Discussion about a subdivision approved in 1988 and never built.

Steve Burns described the Board's pending decision about whether or not the planned subdivision had expired or was vested. Applicant, Diane Goodwin had bought the property more than three years after approval. He was actively researching 1977-1981 Planning Board Minutes to determine the rules that were in effect at that time. There was question as to whether a legal opinion was necessary. Diane Goodwin spoke. She had bought the land in 1995, and the deed had been approved in 1987. Glen Farrell said that figuring out if there was an expiration clause was difficult without enough information. Glen MacWilliams said that an ordinance (5.5) states that if there is intent to build a subdivision, and it is not built within 3 years, it becomes null. It is the construction, not the design, and the building, rather than the planning, which signifies necessary effort. Steve Burns said that when an application is accepted, the rules of that time apply.

Glen MacWilliams suggested that a motion be made that the Board acknowledges that the permit had expired and that an application to the Registry of Deeds be made, enabling the applicant to understand what they have. The motion was not seconded; the motion was not made. A possible amendment by Dave Marshall for the motion that was not made concerned investigation of whether the Shoreland permit had expired for the prop-

erty, and in doing so, understanding whether the permit was part of the vested subdivision. This amendment was part of the incomplete motion, and not made.

**Motion** Glen MacWilliams moved to determine that the Shoreland permit had lapsed for the subdivision based on §18.2.8.2. The motion was passed, 5-0.

In discussion, it was understood that the vote proved that the permit had lapsed. Steve Burns said that there was still a need to see what was in effect at that time.

**Motion** Barrie Munro moved, and Dan Remick seconded, to ask the Board of Selectmen to permit the Planning Board to get a legal opinion on the matter, which passed, 5-0.

**Central Maine Power Company—Amendment. Request by CMP to design transmission line connection at Spur Road/Route One in the road rights-of-way. This is requested in case DEP does not permit the transmission line to run over wetlands in the Town's preferred cross-country alignment. Public hearing and decision on alternative alignment. Tabled from the January 22, 2004, Planning Board meeting.**

Chairman Glen Farrell opened the Public Hearing. Carol Allen reported that Doug Burdick of DEP had telephoned her and stated that the original Spur Road route (not the diagonal alternative) was the most reasonable way to direct with the transmission lines. Laurie Downs sympathized with the disappointment over losing the Spur diagonal alternative. Timing requires the work to be completed by summer, 2004. Because the Town must have safe and adequate electricity as an essential service, she asked the Board to approve the appropriate plantings at Stonewall Kitchen. She asked to have a Public Advocate Office letter read into the Public Record. The Chairman closed the Public Hearing.

Glenn Farrell read the letter from Eric J. Bryant, Senior Counsel at the Public Advocate's Office. It said that actions delaying the construction of the line could cause the fundamental plan to be revisited, including the method of crossing the York River. The additional expense put into the river crossing he attributed to the acknowledgement that many CMP ratepayers cross the river.

Mary Smith, Project Manager for CMP, responded to many comments already made, describing CMP's well-worn copy of the Agreement made months ago, every sentence of which her company has strived to exemplify. The purpose of Planning Board meeting that evening, CMP understood, was to receive approval for the buffering at Stonewall Kitchen, which had changed from the implementation of 8-foot trees to 10-foot trees, at the Board's request.

Dave Marshall went over the Board's position of never questioning the need for power. There was no effort to stop the project or cause CMP to lose money. The tabling of the prior application was to see if there was an alternative. Barrie Munro asked Mary Smith if CMP submitted a Project Modification Application for the Spur Road diagonal. She answered that a written application was not made because there was a pre-application

meeting, which was part of the process. When the alternative route idea was presented at that meeting, the DEP took that position that it would not be complying with the new, Spur diagonal alternative route. Barrie Munro said that the idea for the alternate route occurred during, and all work on the diagonal route had begun after, a site visit in September, 2003. He asked if the first written documentation of the effort had occurred on the 2<sup>nd</sup> of February, 2004, and if, before then, everything had been oral. Mary Smith acknowledged that February 2 was the date of the DEP letter. She said that on August 21, 2003, e-mail to the Town Manager identified various alternative routes. On August 28, 2003, follow-up maps were sent. With regard to the DEP meeting where the alternative was suggested, CMP did not yet have Right Title and Interest to the land for the Spur diagonal route and Eminent Domain was not a possibility for acquiring that land.

Barrie Munro said that the public must understand that the Board never intended to create a denial of electrical services. Glen MacWilliams said that there was no harm against CMP. The Board members voted with their hearts to table it. Dave Marshall asked Mary Smith if CMP was planning to go to the PUC the following day, should the vote not come through at the current meeting. She answered that only continued construction was planned for the following day. In the next week, poles will start to go in, and the events leading to the mid-May priority of energizing the Kittery substation would be the focus. Dave Marshall asked if the Spur Road segment could be put off so that York could investigate other possibilities, such as burying the line. Mary Smith answered that it was not likely, as work there is slated to being in 2-½ weeks, in March of 2004. The delay penalty costs are approximately \$1,000 per day. Furthermore, the nature of the work becomes increasingly dangerous as traffic increases.

Chairman Glenn Farrell brought up the change to taller trees in front of the proposed warehouse at Stonewall Kitchen. Mary Smith said that Stonewall has an emergency entrance water line that requires a pole to be moved 40 feet north. She showed it on the plan. Movement of the pole will not change the tree-planting plan. Steve Burns said that the emergency area clearing she pointed out on the Landscape Plan has to do with a water line underneath. He showed the Board that the plan note changes he had recommended and they had agreed to at a previous meeting had been made.

**Motion** Glen MacWilliams moved to accept the Landscape Plan as shown. Glen Farrell seconded the motion. The motion passed, 3-2, with Glenn Farrell, Dan Remick, and Glen MacWilliams for, and Dave Marshall and Barrie Munro against.

Mary Smith graciously thanked the Board.

Barrie Munro suggested that the Planning Board submit a letter to the Board of Selectmen insisting that the Planning Board be included in any future construction of this magnitude from the onset, rather than being brought in after basic agreements have been made. Glen MacWilliams said that a letter should be sent to DEP commissioner requesting adjudication with the possibility of requesting that selectmen fund burying the Spur Road segment of the line. Steve Burns said that any request to the DEP has to come from the Board of Selectmen.

**Motion** Glen MacWilliams moved to request the Selectmen to quickly consider seeking funding the burial of this transmission line. Dave Marshall seconded the motion.

In discussion, Michelle Moody, Chairman of the Board of Selectmen, came forward and said that the Selectmen will not take any requests. It would be impossible to get the item on the main budget.

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

**Flood/Briggs Subdivision. 181 Nubble Road. Map 29/Lot 23. Public Hearing. Application for Subdivision of the lot with the Lighthouse Restaurant. The applicant proposes to remove the restaurant and create 3 lots for single-family residences, with common open land along the Ocean.**

Mike Livingston of Anderson Livingston Engineers described “plusses” the proposed subdivision would bring, including proper setback distances from the ocean, which the restaurant does not meet, smaller buildings, smaller impervious surface ratios, and less traffic. Glenn Farrell opened the Public Hearing. George Dillon, of 187 Nubble, showed the location of his house on the plan and said that he believed his view would continue to be beautiful with the new houses. He said he would be happier not to have the restaurant. William Adie, who lives behind the Dillons’ house, had spoken to Steve Burns in his office earlier and thanked him for the time. He felt the new houses would be an improvement and said Steve Burns had suggested an easement along the side of the subdivision to allow the Town to go in and clear out a gully that exists. As well, William Adie was concerned about all drainage issues. Steve Burns said that there will be sheet flow, but most likely not onto William Adie’s property. Mike Shapiro spoke next. His current view of the ocean is over the roof of the restaurant. He wanted to know the size of the buildings. Mike Livingston said the houses would each be about 4,000 sq. ft. Glenn Farrell read a letter from Franklin and Anna Resnansky in which they requested 2-story houses only for the protection of the ocean view. A letter from Linda & Wayne Franklin also asked if the splitting of the lot could be blocked or preserved for Sohier Park. Ray Boynton of 174 Nubble Road came forward and stated that the ordinance would allow as much as 50% of the land to be developed with a 50 ft. buffer from the adjacent lots. Speaking against the project, he described how houses were being wrongly “stuffed in there.” The Public Hearing was closed. Showing him Articles 5 and 8, Steve Burns responded to Ray Boynton that the 50-ft. buffer and 50% development figure had to do with cluster housing, which this was not. Only thirty-five percent of the lot can be covered.

Applicant Craig Briggs described the possibility of circumventing subdivision ordinances by putting in 2 houses that could be 15,000 sq. ft. and nonconforming, by using the footprint of the restaurant. Putting in 3 houses with the limitations, he felt, was the proper thing to do.

**Motion** Barrie Munro moved to accept the application as complete for review. Dave Marshall seconded the motion.

In discussion, Glen MacWilliams pointed out that the plans that were given to Board members prior to the meeting no longer applied. He did not see how the application was complete for review when a description of the drainage had neither been supplied nor waived. Engineering information was omitted. The issues of drainage that comes across the road and the drainage easement had not been addressed, despite Public Works' request for information. Drainage water, special construction practices, drainage for landscaping, and drainage difficulties were issues Glen MacWilliams felt had to be addressed. Glenn Farrell added the high intensity soil survey and a grading plan to the list. Dave Marshall said that it had not been established if there would be 2 or 3 lots.

Mike Livingston said that what he really wanted to know was if, since the subdivision would be in the Shoreland Overlay Zone, if the lot coverage would be limited to 20%. Steve Burns looked it up and agreed that Mike Livingston was correct. The lot coverage was limited to 20%.

**Vote** The motion to accept the application as complete for review was defeated, 0-5.

**Richard Chase. 449 U.S. Route One. Map 54/Lot 10D.** Public Hearing. Application for a minor amendment to a Route One commercial property. The applicant proposes to construct a 768 square foot building with a garage, workshop and property manager's office.

Chairman Glenn Farrell opened and closed the Public Hearing, as no one came forward to speak. Steve Burns described the application as technically incomplete with no utility and exterior material plans included, an incomplete understanding of the permit for Foodie's deck seating, lack of a parking calculation schedule, a questionable shed location, and turn-out issues. As well, the applicant was requesting a 20 ft. setback, which the Board had to decide whether or not to grant. Barrie Munro pointed out that the request for setback variations from two sides was not possible. There had been a communication error, where Steve Burns was dealing with applicant Dick Chase through his agent, Bruce Crawford, as instructed, whereas Dick Chase preferred that Steve Burns work directly with him.

Glenn Farrell said that the hearing had become more of a sketch meeting. Dave Marshall suggested that the shed be removed, enabling more parking. Glenn Farrell said that the garage couldn't be full of stuff and still be included as 2 spaces in the parking count. Steve Burns said that at some point, the outside deck seating had been resolved, but the approval needed to be tracked down. Dick Chase said he wanted to keep a space between the buildings, which Dan Remick said was a good idea. Glenn Farrell told Dick Chase to return with a more complete plan, so the Board can decide whether or not the setback would be possible. Also, complete parking calculations have to be submitted, and there will be no shed located in the setback.

### **Other Business/Adjourn**

Steve Burns said that Town Attorney, Larry Walden, said that the York/Berwick joint review of the Granite Woods Subdivision was necessary. The developer has recently said that there is no Granite Woods land in York. There once was. It was suggested that the York land was transferred to abutters after the original plan was made. That might mean the developer is trying to get around the Planning Board. It will be necessary for the Town Attorney to follow up on the matter.

**Motion** Barrie Munro moved, and Dave Marshall seconded, to have Steve Burns ask the Board of Selectmen to contact the Town Attorney on the matter. The motion passed, 5-0

Steve Burns went through a list of information. He handed out an article about better models for commercial development regarding franchises. There was to be an upcoming workshop at the Wells Reserve about coastal wetlands, and the Planning Department was happy to pay for Board members to attend. He handed out packets for the next meeting to include information about workforce housing. Dan Remick asked that the open mike Public Input session be restricted to non-Public Hearing items, only.

The meeting adjourned at 10:05.